16B C.J.S. Constitutional Law VI XVII F Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3585, 3588 to 3591, 3593 to 3600, 3602, 4869

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
A.L.R. Index, Labor and Employment

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1444

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

1. General Considerations

§ 1444. Employment regulations subject to equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3585, 3588 to 3591, 4869

Laws regulating employment must conform to equal protection requirements.

Matters related to employment are subject to reasonable regulation by a state,[1] but to the extent that those regulations are arbitrary or unreasonable, they deny the equal protection of the laws.[2] While the Fourteenth Amendment's Equal Protection Clause is implicated when any statute hinders a person from earning a living,[3] the right to make a living is not a fundamental right[4] and a classification is tested under the traditional equal protection analysis, that is, it must be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate government interest.[5] However, under certain state constitutional equal protection provisions, the right to employment is an important right, and enactments affecting it are subject to close scrutiny.[6] Employees and employers are not so similarly situated that differences in treatment accorded them are prohibited by equal protection.[7]

Among the statutes regulating employment held not to violate equal protection are those governing the employment of children,[8] employment agencies,[9] migrant labor,[10] giving notice before voluntarily going out of business,[11] and employee safety

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

and health,[12] including guidelines of the Occupational Safety and Health Administration,[13] as well as statutes dealing with employees' right of privacy,[14] and doctors' rights to staff privileges in hospitals.[15]

As applied to nonprofit activities of religious employers, the exemption of religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion[16] was rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to conduct their religious missions and thus did not violate equal protection.[17] A state's job discrimination statutes did not violate employers' equal protection rights by permitting employees but not employers to transfer a controversy from a commission to a court.[18]

State action.

Where the acts of an employer are state acts subject to the Fourteenth Amendment, equal treatment of employees of the same class is a fundamental requisite of equal protection rights, and any distinction between employees must be on a reasonable basis, and distinctions drawn must relate, in some way, to the purpose of the classification.[19] For example, equal protection operates to bar a state-protected public utility from arbitrarily or invidiously discriminating in its employment decisions.[20]

A state apprenticeship council's policy of giving smaller employers a more generous hiring ratio violated the Equal Protection Clause, since there was no rational basis for limiting apprenticeship opportunities with larger employers more strictly than with smaller ones.[21]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Railway Mail Ass'n v. Corsi, 326 U.S. 88, 65 S. Ct. 1483, 89 L. Ed. 2072 (1945).

2 Ga.—Independent Gasoline Co. v. Bureau of Unemployment Compensation, 190 Ga. 613, 10 S.E.2d 58 (1940).
Ill.—Figura v. Cummins, 4 Ill. 2d 44, 122 N.E.2d 162 (1954).
Ky.—Burrow v. Kapfhammer, 284 Ky. 753, 145 S.W.2d 1067 (1940).
Mass.—In re Opinion of the Justices, 303 Mass. 631, 22 N.E.2d 49, 123 A.L.R. 199 (1939).
Miss.—Southern Bus Lines v. Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of America, 205 Miss. 354, 38 So. 2d 765 (1949).
Mo.—State v. Taylor, 351 Mo. 725, 173 S.W.2d 902 (1943).
N.J.—Washington Nat. Ins. Co. v. Board of Review of N. J. Unemployment Compensation Commission, 1 N.J. 545, 64 A.2d 443 (1949).
Only arbitrary discrimination prohibited
Equal protection only prohibits arbitrary discrimination on grounds unrelated to a worker's qualifications.
Cal.—Gay Law Students Assn. v. Pacific Tel. & Tel. Co., 24 Cal. 3d 458, 156 Cal. Rptr. 14, 595 P.2d 592 (1979).

3 Miss.—White v. Hattiesburg Cable Co., 590 So. 2d 867 (Miss. 1991).

4 U.S.—Doe v. Nebraska, 734 F. Supp. 2d 882 (D. Neb. 2010).
Right to teach
Tex.—State v. Project Principle, Inc., 724 S.W.2d 387, 37 Ed. Law Rep. 961 (Tex. 1987).
Employment as paralegal
Fla.—The Florida Bar v. Neiman, 816 So. 2d 587 (Fla. 2002).

5 U.S.—Madarang v. Bermudes, 889 F.2d 251 (9th Cir. 1989).
Ga.—Independent Gasoline Co. v. Bureau of Unemployment Compensation, 190 Ga. 613, 10 S.E.2d 58 (1940).

6 Alaska—Matson v. State, Commercial Fisheries Entry Com'n, 785 P.2d 1200 (Alaska 1990).

7 U.S.—Carpenters 46 County Conference Bd. v. Construction Industry Stabilization Committee, 393 F. Supp. 480 (N.D. Cal. 1975).

8 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).

Allowing children to deliver newspapers

Mich.—Higgins v. Monroe Evening News, 404 Mich. 1, 272 N.W.2d 537 (1978).

9 Wash.—Petstel, Inc. v. King County, 77 Wash. 2d 144, 459 P.2d 937 (1969).

Exemption of certain types of agencies

Mass.—G & M Employment Service, Inc. v. Com., 358 Mass. 430, 265 N.E.2d 476 (1970).

10 U.S.—Doe v. Hodgson, 344 F. Supp. 964 (S.D. N.Y. 1972), judgment aff'd, 478 F.2d 537 (2d Cir. 1973).

Mass.—Consolidated Cigar Corp. v. Department of Public Health, 372 Mass. 844, 364 N.E.2d 1202 (1977).

11 Me.—Shapiro Bros. Shoe Co., Inc. v. Lewiston-Auburn Shoeworkers Protective Ass'n, 320 A.2d 247 (Me. 1974).

12 Cal.—Salinero v. Pon, 124 Cal. App. 3d 120, 177 Cal. Rptr. 204 (1st Dist. 1981).

Mass.—Com. v. Henry's Drywall Co., Inc., 366 Mass. 539, 320 N.E.2d 911 (1974).

13 U.S.—Desarrollos Metropolitanos, Inc. v. Occupational Safety and Health Review Com'n, 551 F.2d 874 (1st Cir. 1977).

14 Minn.—Gawel v. Two Plus Two, Inc., 309 N.W.2d 746 (Minn. 1981).

Fingerprinting

U.S.—Thom v. New York Stock Exchange, 306 F. Supp. 1002 (S.D. N.Y. 1969), judgment aff'd, 425 F.2d 1074 (2d Cir. 1970).

Prohibiting efficiency monitoring by some employers

Mass.—Opinion of the Justices, 358 Mass. 827, 260 N.E.2d 740 (1970).

Precluding psychological stress evaluation examination

N.Y.—Nothdurft v. Ross, 85 A.D.2d 658, 445 N.Y.S.2d 222 (2d Dep't 1981).

15 Ohio—Fort Hamilton-Hughes Memorial Hosp. Center v. Southard, 12 Ohio St. 3d 263, 466 N.E.2d 903 (1984).

16 42 U.S.C.A. § 2000e-1.

17 U.S.—New York and Massachusetts Motor Service, Inc. v. Massachusetts Com'n Against Discrimination, 401 Mass. 566, 517 N.E.2d 1270 (1988).

18 Mass.—New York and Massachusetts Motor Service, Inc. v. Massachusetts Com'n Against Discrimination, 401 Mass. 566, 517 N.E.2d 1270 (1988).

19 U.S.—Foster v. Mobile County Hospital Bd., 398 F.2d 227, 37 A.L.R.3d 637 (5th Cir. 1968).

As to equal protection as applied to public employees, see §§ 1449 to 1469.

20 Cal.—Gay Law Students Assn. v. Pacific Tel. & Tel. Co., 24 Cal. 3d 458, 156 Cal. Rptr. 14, 595 P.2d 592 (1979).

21 N.H.—Longchamps Elec., Inc. v. New Hampshire State Apprenticeship Council, 145 N.H. 502, 764 A.2d 921 (2000).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1445

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

1. General Considerations

§ 1445. Discharge and blacklisting

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3590

Equal protection is not violated if there was a rational reason for the discharge of an employee, and antiblacklisting laws have been upheld in the face of an equal protection challenge.

Equal protection attacks may not be made on personnel decisions merely upon a claim that one employee rather than another was discharged if there is a rational reason for the disparity in treatment.[1] Equal protection is not violated by the fact that the dismissal of wrongful discharge claims for want of exhaustion of administrative remedies under the Railway Labor Act precludes a later common-law action[2] or that separate standards are used to determine if doctors engaged in different areas of practice should not be reappointed to hospital staff privileges.[3]

A statute restricting the recovery of noneconomic and punitive damages in a wrongful discharge case does not violate equal protection.[4]

Service letter laws, aimed at blacklisting and requiring that a corporation, on the request of a former employee who has been discharged or has left service, issue a letter stating the nature and duration of the employee's service and the true reason for

leaving employment, do not impermissibly infringe upon an employer's fundamental right.[5] Such legislation, properly reviewed under the traditional rationality test,[6] is not violative of equal protection.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Bergersen v. Codd, 482 F. Supp. 223 (E.D. N.Y. 1979), aff'd, 628 F.2d 1344 (2d Cir. 1980).
Stolen liquor
Plaintiff was not denied equal protection because his employer, acting under color of state law, chose to pursue disciplinary proceedings only against the plaintiff instead of each of the employees who had purchased and sold stolen liquor, where the plaintiff had initiated the scheme, so that there was rational basis for disciplining the plaintiff more harshly than the other employees.
U.S.—Marcello v. Long Island R. R., 465 F. Supp. 54 (S.D. N.Y. 1979).
Work stoppage
Differential treatment of employees engaged in a work stoppage was rationally designed to maintain the work force.
Ill.—Strobeck v. Illinois Civil Service Commission, 70 Ill. App. 3d 772, 26 Ill. Dec. 911, 388 N.E.2d 912 (1st Dist. 1979).

2 U.S.—Essary v. Chicago and N. W. Transp. Co., 618 F.2d 13 (7th Cir. 1980).

3 Mass.—Duby v. Jordan Hospital, 369 Mass. 626, 341 N.E.2d 876 (1976).

4 Mont.—Meech v. Hillhaven West, Inc., 238 Mont. 21, 776 P.2d 488 (1989).

5 Mo.—Hanch v. K. F. C. Nat. Management Corp., 615 S.W.2d 28, 24 A.L.R.4th 1100 (Mo. 1981).

6 U.S.—Rimmer v. Colt Industries Operating Corp., 656 F.2d 323 (8th Cir. 1981).

7 U.S.—Prudential Ins. Co. of America v. Cheek, 259 U.S. 530, 42 S. Ct. 516, 66 L. Ed. 1044, 27 A.L.R. 27 (1922); Rimmer v. Colt Industries Operating Corp., 656 F.2d 323 (8th Cir. 1981).
Mo.—Hanch v. K. F. C. Nat. Management Corp., 615 S.W.2d 28, 24 A.L.R.4th 1100 (Mo. 1981).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1446

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

1. General Considerations

§ 1446. Labor relations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3598, 3599

Various regulations concerning labor organizations and collective bargaining have been held not to deny equal protection, such as statutes providing for compulsory arbitration.

Collective bargaining is not a fundamental right, and a union and its members are not suspect classes for purposes of equal protection review.[1] Additionally, strikers, as a class, are not entitled to special treatment under the Equal Protection Clause.[2]

Equal protection was not violated by statutes classifying employers subject to a replacement worker act,[3] or providing for compulsory arbitration,[4] as well as right to work laws.[5]

Requiring employees to resort to a grievance procedure prescribed by a collective bargaining agreement before bringing suit does not deprive them of equal protection on the ground that collective bargaining agreements may vary in content so that employees under one agreement might obtain advantages denied under another.[6] Thus, an employee's rights upon discharge are limited by a collective bargaining agreement and labor relations statutes, and there are no higher equal protection standards

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

imposed by the Constitution,[7] and where no state or federal action on the part of either the employer or union is alleged or present, prohibitions with respect to equal protection do not apply.[8]

A statute that placed a complete ban on residential labor picketing, regardless of its peacefulness, but did not prohibit any nonlabor picketing, violated the Equal Protection Clause, since the selective prohibition of labor picketing was not narrowly tailored to advance any valid interest a state might have in preserving residential privacy and tranquility.[9]

A time period for filing challenges to agency fees with a state labor relations commission was unconstitutional under the Equal Protection Clause, where there was a longer limitation period applicable to other unfair labor practice complaints, and the shorter limit greatly circumscribed the fundamental right of employees who were not union members to assert a meritorious First Amendment claim.[10]

CUMULATIVE SUPPLEMENT

Cases:

Concern for labor peace was a rational basis that supported amendments to Public Employment Relations Act that limited mandatory bargaining for units with less than 30% public safety employees, and thus amendments did not violate equal protection, despite contention that classifications were both overinclusive and underinclusive; even though public safety rationale was not voiced during floor debates over proposed amendments, legislature could have reasonably found that giving public safety employees expanded bargaining rights would have discouraged them from engaging in strikes or sick-outs. Iowa Const. art. 1, § 6; Iowa Code Ann. §§ 20.3(11), 20.9(1, 3). AFSCME Iowa Council 61 v. State, 928 N.W.2d 21 (Iowa 2019).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Sweeney v. Pence, 767 F.3d 654 (7th Cir. 2014).

2 U.S.—Lyng v. International Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW, 485 U.S. 360, 108 S. Ct. 1184, 99 L. Ed. 2d 380 (1988).

3 N.J.—Chamber of Commerce of U. S. v. State, 89 N.J. 131, 445 A.2d 353 (1982).

4 Minn.—Fairview Hospital Ass'n v. Public Bldg. Service and Hospital and Institutional Emp. Union Local No. 113 A. F. L., 241 Minn. 523, 64 N.W.2d 16 (1954).
N.Y.—Mount St. Mary's Hospital of Niagara Falls v. Catherwood, 26 N.Y.2d 493, 311 N.Y.S.2d 863, 260 N.E.2d 508 (1970).

5 U.S.—American Federation of Labor v. American Sash & Door Co., 335 U.S. 538, 69 S. Ct. 258, 93 L. Ed. 222, 6 A.L.R.2d 481 (1949); Lincoln Federal Labor Union No. 19129, A.F. of L. v. Northwestern Iron & Metal Co., 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).
Okla.—Eastern Oklahoma Bldg. & Const. Trades Council v. Pitts, 2003 OK 113, 82 P.3d 1008 (Okla. 2003).

6 Or.—State ex rel. Nilsen v. Berry, 248 Or. 391, 434 P.2d 471 (1967).

7 U.S.—Scoble v. Detroit Coil Co., 611 F.2d 661 (6th Cir. 1980).

8 U.S.—Florey v. Air Line Pilots Ass'n, Intern., 575 F.2d 673 (8th Cir. 1978).

9 Colo.—CF&I Steel, L.P. v. United Steel Workers of America, 23 P.3d 1197, 113 A.L.R.5th 631 (Colo. 2001).
A.L.R. Library
Validity, Construction, and Operation of Statute or Regulation Forbidding, Regulating, or Limiting Peaceful Residential Picketing, 113 A.L.R.5th 1.

10 Mass.—Lyons v. Labor Relations Com'n, 397 Mass. 498, 492 N.E.2d 343, 31 Ed. Law Rep. 1250 (1986).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1447

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

1. General Considerations

§ 1447. Wages and hours

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3591, 3596, 3602

Legislation pertaining to wages and hours is generally held not to deny equal protection.

Legislation pertaining to wages and hours is generally held not to deny equal protection.[1] To challenge a wage and hours law on equal protection grounds, one must demonstrate that some permitted exception was an arbitrary preference.[2] For example, the application of the Fair Labor Standards Act[3] to workers' functions in the commercial activities of a religious foundation does not deny equal protection on the basis of a difference with the government's treatment of its own volunteer workers, as Congress could rationally have concluded that minimum wage coverage of its volunteers is not required to protect them or to prevent unfair competition with private employers.[4]

Particular statutes, which have been held not violative of equal protection, include those prescribing minimum wages,[5] establishing a standard work day for railroad employees,[6] requiring the payment of overtime wages,[7] and governing actions for the collection of wages.[8]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

It does not deny equal protection not to provide an employer with counsel in an action brought by a commissioner of labor to recover unpaid wages.[9] A statute allowing for the recovery of attorney's fees by a terminated employee suing for wages or commission only if the plaintiff was a commission salesperson, and not if the person was an employee at will, does not deny equal protection.[10] Distinguishing between public and private employers, and allowing an award of attorney's fees only in actions for the recovery of wages brought against private employers, does not violate equal protection as a rational basis existed for the distinction.[11]

A statute requiring private employers to pay their employees any wages they may have lost as a result of service on a jury, or a public board or commission, works an invidious class distinction in violation of equal protection.[12]

CUMULATIVE SUPPLEMENT

Cases:

Labor code provision including ready-mix concrete delivery drivers in California prevailing wage law was rationally related to legislature's purpose of permitting union contractors to compete with nonunion contractors, and thus such provision did not violate equal protection, despite fact that other types of delivery drivers were not included; California legislature could have rationally concluded that ready-mix drivers were more vulnerable to underbidding than other drivers because higher percentage of ready-mix drivers were union workers. U.S. Const. Amend. 14; Cal. Lab. Code § 1720.9. Allied Concrete and Supply Co. v. Baker, 904 F.3d 1053 (9th Cir. 2018).

Employers plausibly alleged that "carve-outs" in safe harbor provision of California's piece-rate wage law, which precluded employers from using provision as affirmative defense against pending wage and hour claims, were included in law only for illegitimate purpose of procuring labor union's support for safe harbor provision, and thus stated claim for violation of equal protection; although state contended that it sought to protect expectations developed as result of already-pending litigation, and to prevent unlimited relief to employers, only explanation for carve-outs and their particular cut-off dates was that they were necessary to procure union's support in passing legislation. U.S. Const. Amend. 14; Cal. Lab. Code § 226.2(g). Fowler Packing Company, Inc. v. Lanier, 844 F.3d 809 (9th Cir. 2016).

Wage earners in city suffered injury in fact required for standing in their action alleging that statute nullifying city's minimum wage ordinance violated their equal protection rights and Voting Rights Act, where ordinance guaranteed them wage of $10.10 per hour, and statute resulted in minimum wage being lowered to $7.25 per hour. U.S. Const. Amend. 14; Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301; Ala. Code § 25-7-45(b). Lewis v. Governor of Alabama, 896 F.3d 1282 (11th Cir. 2018).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—League of Voluntary Hospitals and Homes of N.Y. v. Local 1199, Drug and Hosp. Union, 490 F.2d 1398 (Temp. Emer. Ct. App. 1973).
Prevailing wage act for public works contractors
Ill.—People ex rel. Bernardi v. Roofing Systems, Inc., 101 Ill. 2d 424, 78 Ill. Dec. 945, 463 N.E.2d 123 (1984).

2 N.Y.—People v. Creeden, 281 N.Y. 413, 24 N.E.2d 105 (1939).

3 29 U.S.C.A. § 203(r).

4 U.S.—Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

5 Conn.—West v. Egan, 142 Conn. 437, 115 A.2d 322 (1955).

Exclusion of agricultural workers

U.S.—Doe v. Hodgson, 344 F. Supp. 964 (S.D. N.Y. 1972), judgment aff'd, 478 F.2d 537 (2d Cir. 1973).

6 U.S.—Wilson v. New, 243 U.S. 332, 37 S. Ct. 298, 61 L. Ed. 755 (1917).

7 U.S.—Hinds v. Consolidated Rail Corp., 518 F. Supp. 1350 (Regional Rail Reorg. Ct. 1981); Central Delivery Service v. Burch, 355 F. Supp. 954 (D. Md. 1973), aff'd, 486 F.2d 1399 (4th Cir. 1973).

Motor bus exemption excluding taxi companies

N.J.—Yellow Cab Co. of Camden v. State Through Director of Wage and Hour Bureau, 126 N.J. Super. 81, 312 A.2d 870 (App. Div. 1973).

8 U.S.—Peterson v. Parsons, 73 F. Supp. 840 (D. Minn. 1947).

Priority of workers against corporate estate

Wash.—Matter of Xelco Corp., 28 Wash. App. 878, 626 P.2d 1013 (Div. 2 1981).

9 Or.—State ex rel. Nilson v. Dent, 243 Or. 396, 413 P.2d 58 (1966).

10 Minn.—Anderson v. Medtronic, Inc., 382 N.W.2d 512 (Minn. 1986).

11 Nev.—State, Dept. of Human Resources, Welfare Div. v. Fowler, 109 Nev. 782, 858 P.2d 375 (1993).

12 Haw.—Hasegawa v. Maui Pineapple Co., 52 Haw. 327, 475 P.2d 679 (1970).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1448

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

1. General Considerations

§ 1448. Pensions acts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3591

Statutory classifications in pension acts will be upheld where the classification bears a fair and substantial relation to the objects of the legislation.

Statutory classifications in pension acts,[1] such as those dealing with covered employment[2] or based on retirement date,[3] will be upheld where the classification bears a fair and substantial relation to the objects of the legislation. A distinction may be made between public and private pension plans[4] with regard to such matters as immunity from garnishment.[5] Having a breaking point for the amount a retiree may earn before any reduction in benefits may be imposed does not result in a deprivation of equal protection[6] and neither does requiring employees to make contributions to a fund on a fixed basis rather than on a percentage of earnings.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Peick v. Pension Ben. Guar. Corp., 539 F. Supp. 1025 (N.D. Ill. 1982), judgment aff'd, 724 F.2d 1247 (7th Cir. 1983).

2 U.S.—Johnson v. Botica, 537 F.2d 930 (7th Cir. 1976).

3 Wis.—Bence v. City of Milwaukee, 107 Wis. 2d 469, 320 N.W.2d 199 (1982).

4 N.J.—Snedeker v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 139 N.J. Super. 394, 354 A.2d 331 (App. Div. 1976).

5 Ill.—Friedman and Rochester, Ltd. v. Walsh, 67 Ill. 2d 413, 10 Ill. Dec. 559, 367 N.E.2d 1325 (1977).

6 U.S.—Berry v. City of Portsmouth, Virginia, 562 F.2d 307 (4th Cir. 1977).

7 Neb.—Sullivan v. City of Omaha, Neb., 146 Neb. 297, 21 N.W.2d 510 (1946).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1449

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

a. General Considerations

§ 1449. Arbitrary classifications impermissible

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593

State regulation of public office or employment must be in accord with equal protection.

State regulation of public office or employment must conform to the Fourteenth Amendment's equal protection guarantee.[1] Under the Equal Protection Clause, the State may not condition public employment upon a waiver of a constitutional right or create arbitrary classifications with reference to public employment.[2]

A "class of one" equal protection claim, under which a plaintiff alleges that he or she has been treated differently from other similarly situated persons without any rational basis, but does not allege that the differential treatment was due to the plaintiff's membership in a particular class, is not cognizable in a public employment context. Employment decisions are often subjective and individualized, and government employment, absent legislation, is at-will.[3]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Cal.—Purdy and Fitzpatrick v. State, 71 Cal. 2d 566, 79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194 (1969).

2 Cal.—Purdy and Fitzpatrick v. State, 71 Cal. 2d 566, 79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194 (1969).

3 U.S.—Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008).
Neb.—Carney v. Miller, 287 Neb. 400, 842 N.W.2d 782 (2014).
N.Y.—Bein v. County of Nassau, 118 A.D.3d 650, 987 N.Y.S.2d 416 (2d Dep't 2014).
A.L.R. Library
Application of Class-of-One Theory of Equal Protection to Public Employment, 32 A.L.R.6th 457.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1450

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

a. General Considerations

§ 1450. Job requirements and working conditions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593

Equal protection does not require uniform job requirements provided the government can justify discrepancies.

Equal protection does not mandate that the work performance requirements of all employees of every department of government be uniform[1] provided the government can justify the lack of uniformity.[2] Conversely, the fact that workers in different job categories do similar work in different facilities does not violate equal protection if there is a rational basis for the classification.[3]

Particular regulations concerning work performance requirements and working conditions and allowances, including those dealing with office space,[4] annual leave benefits,[5] working hours[6] and wages,[7] continuing education or training,[8] clothing allowances,[9] grooming standards,[10] outside employment,[11] and the appeal rights of employees whose positions are downgraded[12] have been considered reasonable under the rational basis standard. While polygraph testing for some public officers has been upheld under this test,[13] other polygraph requirements were not upheld under equal protection principles,[14] such as where an exemption of "public safety officers," but not other public employees, from involuntary polygraph testing

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

was both over and underinclusive, and there was not even a rational relation between doing so and the asserted purpose of preventing interruptions in critical public services.[15]

Differences in regulations concerning public employees' work performance requirements and working conditions and allowances, based on geographical considerations, do not deny equal protection where they are applied equally to all members of the same class and have a rational basis.[16] Similarly, making civil service coverage mandatory only in larger counties was related to legitimate state purposes and did not violate the equal protection rights of employees in smaller counties.[17]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Vance v. U.S., 434 F. Supp. 826 (N.D. Tex. 1977), aff'd, 565 F.2d 1214 (5th Cir. 1977).
Term appointments
Statute subjecting positions in a specified grade and above to term appointments did not violate equal protection despite the contention that the classification of those employees as "policy makers" lacked a rational basis.
Ill.—Grobsmith v. Kempiners, 88 Ill. 2d 399, 58 Ill. Dec. 722, 430 N.E.2d 973 (1981).

2 U.S.—Vance v. U.S., 434 F. Supp. 826 (N.D. Tex. 1977), aff'd, 565 F.2d 1214 (5th Cir. 1977).

3 Md.—Briscoe v. Prince George's County Health Dept., 323 Md. 439, 593 A.2d 1109 (1991).

4 Ill.—Redmond v. Novak, 86 Ill. 2d 374, 55 Ill. Dec. 933, 427 N.E.2d 53 (1981).

5 U.S.—Marsh v. Government of Virgin Islands, 13 V.I. 585, 431 F. Supp. 800 (D.V.I. 1977).

6 Pa.—Baxter v. City of Philadelphia, 426 Pa. 240, 231 A.2d 151 (1967).

7 S.D.—American Federation of State, County and Mun. Employees (AFSCME) Local 1922 v. State, 444 N.W.2d 10 (S.D. 1989).

8 Ga.—Sears v. Dickerson, 278 Ga. 900, 607 S.E.2d 562 (2005).
N.H.—Burrage v. New Hampshire Police Standards and Training Council, 127 N.H. 742, 506 A.2d 342 (1986).

9 Ind.—State v. Stateler, 424 N.E.2d 150 (Ind. Ct. App. 1981).

10 U.S.—Kamerling v. O'Hagan, 512 F.2d 443 (2d Cir. 1975).

11 La.—Babineaux v. Judiciary Commission, 341 So. 2d 396 (La. 1976).
Off-duty police officer
Rule requiring written permission for an off-duty police officer to be employed as a private detective was constitutionally applied, where relaxation of the rule in other cases did not involve off-duty work of a sensitive nature or where requests were posted for volunteers for off-duty work, which impliedly negated the need for written permission.
Ark.—Dalton v. City of Russellville, 290 Ark. 603, 720 S.W.2d 918 (1986).

12 U.S.—Atwell v. Merit Systems Protection Bd., 670 F.2d 272 (D.C. Cir. 1981).

13 Wash.—O'Hartigan v. Department of Personnel, 118 Wash. 2d 111, 821 P.2d 44 (1991).

14 Mont.—Oberg v. City of Billings, 207 Mont. 277, 674 P.2d 494 (1983).

15 Cal.—Long Beach City Employees Assn. v. City of Long Beach, 41 Cal. 3d 937, 227 Cal. Rptr. 90, 719 P.2d 660 (1986).

16 Ind.—Town of Speedway v. Nilson, 182 Ind. App. 620, 395 N.E.2d 1292 (1979).

17 Or.—Schlichting v. Bergstrom, 13 Or. App. 562, 511 P.2d 846 (1973).
W. Va.—State ex rel. Deputy Sheriff's Ass'n v. County Com'n of Lewis County, 180 W. Va. 420, 376 S.E.2d 626 (1988).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1451

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1451. Restrictions on eligibility tested under rational relationship analysis

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593, 3594

Equal protection challenges involving ordinary restrictions on eligibility for public office or employment are tested under the rational relationship analysis.

Equal protection challenges involving ordinary restrictions on eligibility for public office or employment are tested under the traditional rational relationship analysis.[1] Therefore, although there is a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications,[2] a right to governmental employment is not per se fundamental, requiring strict scrutiny.[3]

For equal protection purposes, an objective qualification for an office does not apply differently to similarly situated persons but simply limits eligibility to hold that office to a certain class of persons.[4] A constitutional provision requiring that persons holding a particular public office be at least a specified age does not violate equal protection.[5] An antinepotism provision of a state constitution does not violate the Equal Protection Clause of the Fourteenth Amendment.[6] However, a state law requirement that

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

only real property owners be appointed to a government board charged with developing plans to reorganize local government was not rationally related to any legitimate governmental interest and violated the equal protection rights of potential appointees who did not own real property.[7]

A state's restriction of its civil service preference to veterans who entered the armed forces while residing in that state violated the Equal Protection Clause because it penalized otherwise qualified resident veterans who did not meet the prior residence requirement for their exercise of their right to migrate.[8] However, a statute revoking a veterans' preference did not violate equal protection, where the classification of veterans into those who had received the preference and those who had not did not involve a suspect criteria or fundamental right, and the legislature's reasons for the change were rational.[9]

The hiring of one candidate over others does not violate the latter candidates' equal protection rights, where the government official hired the person believed to be best qualified, and the disparate treatment was rationally related to a legitimate governmental objective of properly running the department.[10]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Ariz.—Babbitt v. Asta, 25 Ariz. App. 547, 545 P.2d 58 (Div. 2 1976).
Cal.—Lucchesi v. City of San Jose, 104 Cal. App. 3d 323, 163 Cal. Rptr. 700 (1st Dist. 1980).
Ga.—Sears v. Dickerson, 278 Ga. 900, 607 S.E.2d 562 (2005).
Iowa—Redmond v. Carter, 247 N.W.2d 268 (Iowa 1976).
La.—Bellon v. Deshotel, 370 So. 2d 221 (La. Ct. App. 3d Cir. 1979).
N.J.—Humane Soc. of U. S., New Jersey Branch, Inc. v. New Jersey State Fish and Game Council, 70 N.J. 565, 362 A.2d 20 (1976).
As to the rational basis test, see § 1279.
Conflict of interest statute
Ill.—Brown v. Kirk, 64 Ill. 2d 144, 355 N.E.2d 12 (1976).
Vision requirements for police officers
Kan.—Padilla v. City of Topeka, 238 Kan. 218, 708 P.2d 543 (1985).

2 U.S.—Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).

3 U.S.—Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).
Iowa—Hawkins v. Preisser, 264 N.W.2d 726 (Iowa 1978).
Employment as a firefighter
U.S.—McCool v. City of Philadelphia, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
Employment as a judge
Cal.—Sturgeon v. County of Los Angeles, 191 Cal. App. 4th 344, 119 Cal. Rptr. 3d 332 (4th Dist. 2010).

4 Ga.—Sears v. Dickerson, 278 Ga. 900, 607 S.E.2d 562 (2005).

5 Ga.—Traylor v. Democratic Party of Georgia, 241 Ga. 429, 246 S.E.2d 192 (1978).
Minn.—Meyers v. Roberts, 310 Minn. 358, 246 N.W.2d 186, 90 A.L.R.3d 893 (1976).

6 Mo.—State ex inf. Roberts v. Buckley, 533 S.W.2d 551 (Mo. 1976).

7 U.S.—Quinn v. Millsap, 491 U.S. 95, 109 S. Ct. 2324, 105 L. Ed. 2d 74 (1989).

8 U.S.—Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

9 Mont.—Nick v. Montana Dept. of Highways, 219 Mont. 168, 711 P.2d 795 (1985).

10 Wyo.—Bachmeier v. Hoffman, 1 P.3d 1236 (Wyo. 2000).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1452

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1452. Eligibility based on citizenship

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593, 3594

Generally, the exclusion of aliens from the ordinary public employment occupations is subject to strict scrutiny.

The exclusion of aliens from the ordinary public employment occupations, seemingly being inconsistent with the congressional determination to admit aliens to permanent residence, is tested under the strict scrutiny standard.[1] However, where the exclusion concerns positions involving important nonelective executive, legislative, or judicial positions held by officers who participate directly in the formulation, execution, or review of broad public policy, a state need only justify its classification by showing some rational relationship between the interest sought to be protected and the limiting classification.[2] In accordance with these rules, and the special demands of police work, a state may confine the performance of police work to citizens[3] and may require peace officers to be citizens.[4]

An exception to the rule that discrimination based on alienage triggers strict scrutiny on an equal protection challenge has been recognized with regard to political functions, and applies to laws that exclude aliens from positions intimately related to the

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

process of democratic self-government, but this exception must be narrowly construed.[5] A court looks to the actual functions of the position, and the focus is on whether a position is such that the officeholder would necessarily exercise broad discretionary power over the formulation or execution of public policies importantly affecting citizens.[6] The "political function" exception is not applicable to the position of notary public, and the possibility that some resident aliens are unsuitable for that role may not, consistent with equal protection guarantees, justify a wholesale ban against all resident aliens.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Foley v. Connelie, 435 U.S. 291, 98 S. Ct. 1067, 55 L. Ed. 2d 287 (1978); Sugarman v. Dougall, 413 U.S. 634, 93 S. Ct. 2842, 37 L. Ed. 2d 853 (1973).
As to the strict scrutiny standard, see § 1275.
Public works
Statute prohibiting employment of aliens on public works discriminated arbitrarily against aliens' right to pursue lawful occupation and offended the Equal Protection Clause.
Cal.—Purdy and Fitzpatrick v. State, 71 Cal. 2d 566, 79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194 (1969).

2 U.S.—Foley v. Connelie, 435 U.S. 291, 98 S. Ct. 1067, 55 L. Ed. 2d 287 (1978).

3 U.S.—Foley v. Connelie, 435 U.S. 291, 98 S. Ct. 1067, 55 L. Ed. 2d 287 (1978).

4 U.S.—Cabell v. Chavez-Salido, 454 U.S. 432, 102 S. Ct. 735, 70 L. Ed. 2d 677 (1982).

5 U.S.—Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).

6 U.S.—Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).

7 U.S.—Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1453

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1453. Eligibility based on residence

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593, 3594

A requirement of residence during employment by a county or municipality is valid under the traditional equal protection test; durational residency requirements, which require residency for a certain period prior to applying for office or employment, are generally subjected to the more rigorous strict scrutiny standard.

A county or municipal employee residence requirement bears a rational relationship to one or more legitimate state purposes and is constitutional under the traditional equal protection test.[1] Residency requirements are rationally related to a legitimate interest of having employees, such as police officers, available for emergencies on short notice,[2] as well as an interest in those paid by the public residing and spending their money within the jurisdiction.[3] Employees may be granted exemptions from residency requirements in situations that accord with the requirements of equal protection.[4]

While a durational residence requirement may be upheld as furthering a state's legitimate interests in ensuring that board members are familiar with local problems,[5] or that a candidate for state senator is familiar with his or her constituency, voters

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

are familiar with the candidate's character, and frivolous candidacies are deterred,[6] it has been held elsewhere, in view of the constitutional right to travel,[7] that durational residency requirements are subject to a compelling state interest test.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Wright v. City of Jackson, Mississippi, 506 F.2d 900 (5th Cir. 1975).
Ariz.—Babbitt v. Asta, 25 Ariz. App. 547, 545 P.2d 58 (Div. 2 1976).
Iowa—Clinton Police Dept. Bargaining Unit v. City of Clinton, 464 N.W.2d 875 (Iowa 1991).
Minn.—Guttu v. City of East Grand Forks, 294 N.W.2d 735 (Minn. 1980).
Mo.—Slater v. City of St. Louis, 548 S.W.2d 590 (Mo. Ct. App. 1977).
W. Va.—Morgan v. City of Wheeling, 205 W. Va. 34, 516 S.E.2d 48 (1999).
Rule applicable only to the newly hired
U.S.—Wardwell v. Board of Ed. of City School Dist. of City of Cincinnati, 529 F.2d 625 (6th Cir. 1976).
Only applicable to high level officials
Kan.—Lines v. City of Topeka, 223 Kan. 772, 577 P.2d 42 (1978).
Police officers; intermediate scrutiny
Requirement that police officers live within the city survived scrutiny, even if an intermediate standard of review was applied, since the requirement was a reasonable exercise of the city's discretion to conduct its own affairs and was not overridden by an interest in obtaining or continuing employment.
Conn.—Carofano v. City of Bridgeport, 196 Conn. 623, 495 A.2d 1011 (1985).

2 U.S.—Gusewelle v. City of Wood River, 374 F.3d 569 (7th Cir. 2004).
Ga.—Dixon v. City of Perry, 262 Ga. 212, 416 S.E.2d 279 (1992).
N.H.—Seabrook Police Ass'n v. Town of Seabrook, 138 N.H. 177, 635 A.2d 1371 (1993).

3 N.Y.—Winkler v. Spinnato, 72 N.Y.2d 402, 534 N.Y.S.2d 128, 530 N.E.2d 835 (1988).

4 Mass.—Town of Milton v. Civil Service Commission, 365 Mass. 368, 312 N.E.2d 188 (1974).
Mich.—Detroit Police Officers Ass'n v. City of Detroit, 385 Mich. 519, 190 N.W.2d 97 (1971).
Miss.—Hattiesburg Firefighters Local 184 v. City of Hattiesburg, 263 So. 2d 767 (Miss. 1972).
N.C.—Maines v. City of Greensboro, 300 N.C. 126, 265 S.E.2d 155 (1980).

5 Tenn.—Civil Service Merit Bd. of City of Knoxville v. Burson, 816 S.W.2d 725 (Tenn. 1991).

6 W. Va.—State ex rel. Harden v. Hechler, 187 W. Va. 670, 421 S.E.2d 53 (1992).

7 § 786.

8 Conn.—Bruno v. Civil Service Com'n of City of Bridgeport, 192 Conn. 335, 472 A.2d 328 (1984).
Alaska—State v. Wylie, 516 P.2d 142 (Alaska 1973).
Wash.—Eggert v. City of Seattle, 81 Wash. 2d 840, 505 P.2d 801 (1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1454

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1454. Eligibility of convicted felons

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593, 3594

Provisions barring public office or employment to individuals convicted of a felony or of a breach of the public trust are not violative of equal protection provided there is a rational basis for the classification.

Classifications excluding the public employment of convicted felons are not considered suspect for the purposes of an equal protection analysis,[1] and such a classification has been upheld as having a rational basis[2] and as furthering a government interest.[3] However, an across-the-board ban on the hiring of ex-felons to public employment violates equal protection where it is not reasonably related to any legitimate state purpose.[4]

Statutory provisions disqualifying a public officer, convicted of a breach of trust of his or her office, from again holding any public office have a rational basis and do not violate equal protection.[5] For instance, a statute requiring the removal of a mayor upon conviction of crimes relating to "prohibited actions by a municipal official" did not violate equal protection, despite the mayor's claim that county officials were not subject to the same provisions, in light of the extensive grant of power to municipal

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

officers, which could be abused.[6] However, placing more burdensome requirements on the restoration of eligibility for public office after a conviction of a felony for offices created by the state legislature than for those created by the state constitution is an arbitrary classification and does not rationally further any legitimate state interest.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Cal.—Hetherington v. State Personnel Bd., 82 Cal. App. 3d 582, 147 Cal. Rptr. 300 (3d Dist. 1978).

2 U.S.—Upshaw v. McNamara, 435 F.2d 1188 (1st Cir. 1970).
Ill.—Coles v. Ryan, 91 Ill. App. 3d 382, 46 Ill. Dec. 879, 414 N.E.2d 932 (2d Dist. 1980).
R.I.—Gelch v. State Bd. of Elections, 482 A.2d 1204 (R.I. 1984).
Forfeiture of office
N.H.—Paey v. Rodrigue, 119 N.H. 186, 400 A.2d 51 (1979).

3 N.J.—McCann v. Clerk of City of Jersey City, 167 N.J. 311, 771 A.2d 1123 (2001).

4 U.S.—Kindem v. City of Alameda, 502 F. Supp. 1108 (N.D. Cal. 1980); Butts v. Nichols, 381 F. Supp. 573 (S.D. Iowa 1974).

5 Mich.—People v. Barry, 53 Mich. App. 670, 220 N.W.2d 39 (1974).

6 Ark.—Allen v. State, 327 Ark. 350, 327 Ark. 366A, 939 S.W.2d 270 (1997), as supplemented on denial of reh'g, (Mar. 17, 1997).

7 Ill.—Coles v. Ryan, 91 Ill. App. 3d 382, 46 Ill. Dec. 879, 414 N.E.2d 932 (2d Dist. 1980).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1455

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1455. Dual or successive positions; term limits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593, 3594

Prohibitions against holding dual public offices or employment are generally sustained under the rational basis standard.

Statutes prohibiting holding dual public office or employment are generally sustained under the rational basis standard on the rationale that this practice impairs trust in government and causes an excessive accumulation of power.[1] The rationales these prohibitions have also been found to meet the higher standard required under the strict scrutiny test.[2]

The constitutionality of term limits is subject to rational basis review[3] since the right to run for office is not a fundamental constitutional right.[4] A term limit provision is supported by legitimate and compelling considerations, and thus does not violate equal protection,[5] despite the contention that it hinders equal participation of all citizens to vote.[6] A state constitutional amendment limiting the governor to two consecutive terms does not create an invidious classification and serves a rational public policy.[7] A statute providing that members of a county personnel board may not, within three years of their appointment to the board, have held public office has been held not to violate equal protection.[8] On the other hand, classifications concerning

the holding of dual or successive public offices or employment not rationally serving the purposes of separation of governmental power, nonpartisanship, and inhibiting trafficking in public offices constitute a violation of equal protection.[9]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Arceneaux v. Treen, 671 F.2d 128 (5th Cir. 1982).
La.—Bellon v. Deshotel, 370 So. 2d 221 (La. Ct. App. 3d Cir. 1979).
Mo.—Asher v. Lombardi, 877 S.W.2d 628 (Mo. 1994).
Ohio—State ex rel. Vana v. Maple Heights City Council, 54 Ohio St. 3d 91, 561 N.E.2d 909, 63 Ed. Law Rep. 615 (1990).
R.I.—Cranston Teachers Alliance Local No. 1704 AFT v. Miele, 495 A.2d 233, 26 Ed. Law Rep. 333 (R.I. 1985).
S.C.—Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002).
Public and political party positions
Provision requiring high city officers to forego certain political party offices as a qualification for holding public office did not impair fundamental rights so as to warrant strict scrutiny, and did not violate the equal protection rights of city and political party officials, voters, or political parties, since the provision was intended to eliminate conflicts of interest, broaden opportunities for political and public participation, and reduce opportunities for corruption, thus increasing citizens' confidence in the integrity and effectiveness of government.
N.Y.—Golden v. Clark, 76 N.Y.2d 618, 563 N.Y.S.2d 1, 564 N.E.2d 611 (1990).
Fire district director
A firefighter was not denied equal protection because a statute prohibiting public employees from holding the office of fire protection district director was not likewise imposed on public school employees.
Mo.—State ex inf. Gavin v. Gill, 688 S.W.2d 370 (Mo. 1985).
Judges
(1) State's legitimate interests in preventing judges from holding another office of public trust until their term expired, regardless of whether they resigned, and in maintaining integrity of its judicial system, far outweighed the burden on a judge's right to be a candidate for a nonjudicial position of public trust; thus, the provision of the state constitution requiring the judge to wait until his term of office expired before seeking another office did not violate equal protection rights.
Wis.—Wagner v. Milwaukee County Election Com'n, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816 (2003).
(2) State constitutional prohibition having the effect of preventing a state judge from holding a part-time paid teaching position at a state institution does not contravene equal protection on the ground that municipal judges are not subject to that prohibition in light of distinctions between municipal judges and state judges.
Okla.—Brown v. Lillard, 1991 OK 74, 814 P.2d 1040, 69 Ed. Law Rep. 584 (Okla. 1991).

2 Conn.—Stolberg v. Caldwell, 175 Conn. 586, 402 A.2d 763 (1978).

3 Idaho—Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001).

4 Nev.—Nevada Judges Ass'n v. Lau, 112 Nev. 51, 910 P.2d 898 (1996).
As to whether the right to be a candidate is fundamental, see § 769.
A.L.R. Library
Validity, Construction, and Operation of Constitutional and Statutory "Term Limits" Provisions, 112 A.L.R.5th 1.

5 Cal.—Legislature v. Eu, 54 Cal. 3d 492, 286 Cal. Rptr. 283, 816 P.2d 1309 (1991).

6 Nev.—Nevada Judges Ass'n v. Lau, 112 Nev. 51, 910 P.2d 898 (1996).

7 W. Va.—State ex rel. Maloney v. McCartney, 159 W. Va. 513, 223 S.E.2d 607 (1976).

8 Ala.—McCullough v. State ex rel. Burrell, 352 So. 2d 1121 (Ala. 1977).

9 Iowa—Redmond v. Carter, 247 N.W.2d 268 (Iowa 1976).
Reappointment

A reenactment of an ethics law prohibiting any member of an ethics commission appointed under the original act from again becoming a member under the reenactment was violative of equal protection.

Ala.—Comer v. City of Mobile, 337 So. 2d 742 (Ala. 1976).

Workers' compensation judge

Statute prohibiting only state-employed attorneys who represented petitioners in workers' compensation proceedings from being eligible for appointment as compensation judges was irrational and violated equal protection.

Minn.—Nelson v. Peterson, 313 N.W.2d 580 (Minn. 1981).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1456

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

c. Regulation of Conduct

§ 1456. Ethics laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3593 to 3597

Ethics requirements for public employees are subject to a rational basis test.

An ethics code's distinctions between groups of employees subject to its requirements are not subject to strict scrutiny, where the disclosure requirements at issue were not directed at a suspect class, because the right to public employment is not fundamental.[1] The rational basis test[2] applies when determining whether the "revolving door" provision of an ethics act violates equal protection.[3] For example, using a rational basis review, a regulation barring state troopers from engaging in the private practice of law, in contrast to other types of employment, did not violate the Equal Protection Clause; the prohibition on the outside practice of law was rationally related to the state's interest in preserving the public trust and insuring that its employees did not place themselves in difficult ethical situations.[4]

Statutes and regulations requiring financial disclosure by certain public employees and officials, but excluding from those requirements other categories of employees or officials, have been upheld under the rational basis test.[5] On the other hand,

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

various classifications dealing with financial disclosure requirements have been found arbitrary, capricious, and unreasonable, and, therefore, in violation of the Equal Protection Clause.[6]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Haw.—Nakano v. Matayoshi, 68 Haw. 140, 706 P.2d 814 (1985).

2 § 1279.

3 N.Y.—Forti v. New York State Ethics Com'n, 75 N.Y.2d 596, 555 N.Y.S.2d 235, 554 N.E.2d 876 (1990).
R.I.—In re Advisory From the Governor, 633 A.2d 664 (R.I. 1993).

4 U.S.—State Troopers Non-Commissioned Officers Ass'n of New Jersey v. New Jersey, 643 F. Supp. 2d 615 (D.N.J. 2009), aff'd, 399 Fed. Appx. 752 (3d Cir. 2010).

5 U.S.—Duplantier v. U.S., 606 F.2d 654 (5th Cir. 1979).
Ala.—Gideon v. Alabama State Ethics Commission, 379 So. 2d 570 (Ala. 1980).
Ill.—Illinois State Emp. Ass'n v. Walker, 57 Ill. 2d 512, 315 N.E.2d 9 (1974).
Md.—Montgomery County v. Walsh, 274 Md. 502, 336 A.2d 97 (1975).
High-level officials only
Cal.—County of Nevada v. Macmillen, 11 Cal. 3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345 (1974).

6 Mich.—Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10), 396 Mich. 465, 242 N.W.2d 3 (1976).
Pa.—Snider v. Thornburgh, 496 Pa. 159, 436 A.2d 593 (1981).
Lower threshold for attorneys and brokers
Cal.—Hays v. Wood, 25 Cal. 3d 772, 160 Cal. Rptr. 102, 603 P.2d 19 (1979).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1457

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

c. Regulation of Conduct

§ 1457. Political activity

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3597

Statutes and regulations requiring public officials or employees to resign their positions upon becoming candidates for elective public office may be upheld as being reasonably related to maintaining the integrity of the public work force but may be invalidated if not the least restrictive alternative.

Statutes and regulations requiring that public officials or employees resign their positions or take a leave of absence upon becoming candidates for elective public office have been upheld against equal protection claims as being reasonably related to the legitimate legislative purpose of maintaining the integrity and competency of the public work force.[1] For instance, a deputy sheriff was not denied equal protection by being prohibited from becoming a candidate for sheriff pursuant to a statute prohibiting deputy sheriffs from engaging in any political activity, and also prohibiting a leave of absence, since a state's compelling interest in promoting public safety would be impaired if deputy sheriffs were routinely granted leaves to run for office.[2] Likewise, a resign-to-run provision of a code of judicial conduct did not violate the equal protection rights of an assistant judge who violated the provision by running for probate judge without first resigning his assistant judge position; the restriction

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

was designed to protect the fairness, and perceived fairness, of judicial decision making and minimize the distraction of election campaigns.[3]

A law prohibiting police officers from making any political contribution[4] or using the influence of their office for any political reason[5] does not violate equal protection. On the other hand, a flat prohibition on public employees seeking elective office has been found to be an infringement of a fundamental right to candidacy that is not justified by the compelling state interest in maintaining the honesty and impartiality of the public work force or even being reasonably necessary to the satisfaction of that state interest.[6] Furthermore, where a less restrictive alternative than resignation is available to an employee or officer who wants to run for public office, such as a leave of absence, a requirement that the employee resign is not justified by a state's compelling interest in promoting harmony among public employees.[7]

A provision in a state constitution that a member of the legislature may not take an office for which the pay was increased during that term of the legislature does not violate the equal protection requirement of the U.S. Constitution.[8] Furthermore, a statute prohibiting a member of a county commission from voting for the passage of a county budget that provides for a salary increase for a spouse who is a county employee does not deny equal protection to members of a county commission.[9]

Statutes that limit the political activities of sheriff's employees, that differ among counties, violate equal protection because there is no reasonable reason for treating an officer differently just because he or she is in a county of a certain class.[10] However, provisions of a city charter and civil service rules that prohibited any city employee in the classified service from distributing or forwarding through the city's e-mail system any e-mail that had an attachment containing a political message, or from taking part in a partisan political campaign, including any attempt to influence voters by distributing any indicia favoring or opposing a candidate for election or nomination to a public office, did not impinge on employees' rights to due process, free speech, or equal protection since they served the legitimate goal of increasing efficiency in public service.[11]

Prohibiting payroll deductions for political action committees for community college teachers and other state employees, while permitting these deductions for employees of common schools, does not violate equal protection since the classification is reasonable in that employees of the state are often treated differently.[12]

CUMULATIVE SUPPLEMENT

Cases:

A law that results in the termination of a public employee who runs for elective office does not need to survive heightened scrutiny to be constitutional under the First Amendment. U.S.C.A. Const.Amend. 1. Kane v. City of Albuquerque, 2015-NMSC-027, 358 P.3d 249 (N.M. 2015).

Statute protecting hazardous duty officers from employer prohibitions on engaging in political activity when the officer is off duty "except as otherwise provided by law" did not expressly deny city the power to prohibit employees from seeking elective office in its home rule charter, even assuming the statute was a general law; the charter fell within statute's "except as otherwise provided by law" exception to prohibiting engagement in political activity, and municipalities had authority to promulgate qualifications and standards for appointed employees. West's NMSA Const. Art. 10, § 6(D); West's NMSA § 10–7F–9. Kane v. City of Albuquerque, 2015-NMSC-027, 358 P.3d 249 (N.M. 2015).

[END OF SUPPLEMENT]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Otten v. Schicker, 655 F.2d 142 (8th Cir. 1981).
Fla.—Swinney v. Untreiner, 272 So. 2d 805 (Fla. 1973).
Mass.—Boston Police Patrolmen's Ass'n, Inc. v. City of Boston, 367 Mass. 368, 326 N.E.2d 314 (1975).

2 W. Va.—Deeds v. Lindsey, 179 W. Va. 674, 371 S.E.2d 602 (1988).

3 Vt.—In re Hodgdon, 189 Vt. 265, 2011 VT 19, 19 A.3d 598 (2011).

4 Mo.—Pollard v. Board of Police Com'rs, 665 S.W.2d 333 (Mo. 1984).

5 Ala.—City of Huntsville v. Certain, 453 So. 2d 715 (Ala. 1984).

6 U.S.—Mancuso v. Taft, 476 F.2d 187 (1st Cir. 1973).
As to whether the right to be a candidate is fundamental, and the view that it is not, see § 769.

7 Minn.—Bolin v. State, Dept. of Public Safety, 313 N.W.2d 381 (Minn. 1981).

8 Wash.—State ex rel. Anderson v. Chapman, 86 Wash. 2d 189, 543 P.2d 229 (1975).

9 W. Va.—Serge v. Matney, 165 W. Va. 801, 273 S.E.2d 818 (1980).

10 Pa.—DeFazio v. Civil Service Com'n of Allegheny County, 562 Pa. 431, 756 A.2d 1103 (2000).

11 U.S.—Wilson v. City of St. Louis, 418 S.W.3d 501 (Mo. Ct. App. E.D. 2013), reh'g and/or transfer denied, (Dec. 5, 2013) and transfer denied, (Feb. 4, 2014).

12 Wash.—Washington Educ. Ass'n v. Smith, 96 Wash. 2d 601, 638 P.2d 77, 1 Ed. Law Rep. 1317 (1981).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1458

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

c. Regulation of Conduct

§ 1458. Disciplinary action

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3595

To comply with equal protection requirements, a state's only obligation with regard to disciplinary matters is to treat all employees reasonably and rationally.

To comply with equal protection requirements, a state's only obligation with regard to discipline is to treat all employees reasonably and rationally,[1] and strict scrutiny does not apply.[2] Thus, an employee subject to discipline who is discharged may not claim unequal treatment because others subject to discipline are only suspended.[3] When a public employee alleges discriminatory discipline in violation of the Equal Protection clause, to determine whether other employees are similarly situated, the court evaluates whether the other employees are involved in or accused of the same or similar conduct and are disciplined in different ways.[4]

An equal protection violation does not result from the different treatment given to civil service employees who are considered to have automatically resigned following unexcused absences and other employees who are discharged for misconduct, given

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

the different effects of the two dispositions on the former workers' future employment rights.[5] The matter of backpay after the reinstatement of a civil service employee may be treated differently than in the case of municipal employees not covered by civil service in view of the fact that employees covered by civil service constitute a separate class.[6] On the other hand, disciplinary proceedings against an employee constitute a denial of equal protection when they represent an arbitrary, irrational decision to discriminate among employees similarly situated, such as with regard to their right to notice of their appeal rights.[7]

The denial of a hearing during disciplinary proceedings involving a public employee has been upheld as having a rational basis where the employee was suspended for less than a specified time.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Roche v. Foulger, 404 F. Supp. 705 (D. Utah 1975).
Suspension of indicted official
Statute that permits governor to suspend public official indicted for felony was rationally related to legitimate government purpose, treated all elected officials similarly, and did not violate equal protection.
Ga.—Eaves v. Harris, 258 Ga. 1, 364 S.E.2d 854 (1988).

2 Iowa—Bennett v. City of Redfield, 446 N.W.2d 467 (Iowa 1989).

3 U.S.—Herzbrun v. Milwaukee County, 504 F.2d 1189 (7th Cir. 1974).
Discriminatory discharge
To state a claim for discriminatory discharge in violation of equal protection under a protected-class theory, a public employee must allege: (1) that he belongs to a protected class; (2) that he was performing his duties satisfactorily; (3) that he was discharged; and (4) that his discharge occurred in circumstances giving rise to an inference of discrimination on the basis of his membership in that class.
U.S.—Weslowski v. Zugibe, 14 F. Supp. 3d 295 (S.D. N.Y. 2014).
As to the application of equal protection to the dismissal of public employees, generally, see § 1465.

4 U.S.—Local 491, International Broth. of Police Officers v. Gwinnett County, GA, 510 F. Supp. 2d 1271 (N.D. Ga. 2007).

5 Cal.—Coleman v. Department of Personnel Administration, 52 Cal. 3d 1102, 278 Cal. Rptr. 346, 805 P.2d 300 (1991).

6 N.J.—Mason v. Civil Service Commission, 51 N.J. 115, 238 A.2d 161 (1968).

7 La.—Spears v. Department of Corrections, 402 So. 2d 203 (La. Ct. App. 1st Cir. 1981).

8 W. Va.—Waite v. Civil Service Commission, 161 W. Va. 154, 241 S.E.2d 164 (1977).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1459

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

c. Regulation of Conduct

§ 1459. Disciplinary action—Police officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3595

Disciplinary action that results in the suspension of a police officer is proper against a claimed denial of equal protection where it is rationally related to the goal of instilling public respect in the police force.

Disciplinary action that results in the suspension of a police officer is proper against a claimed denial of equal protection where it is rationally related to the goal of instilling public respect in the police force,[1] and the imposition of punishment is reasonably related to a police purpose.[2] While there is a violation of equal protection, where a state fails to offer a rational justification for its differential treatment in discharging a police officer for misconduct, while retaining others convicted of similar or more serious misconduct,[3] it has also been held that a difference in punishment for similar misconduct by police officers is insufficient to support an equal protection claim.[4]

Hearings.

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Equal protection is not violated by granting a hearing to some categories of police officers while denying it to probationary officers[5] or denying a hearing on a short-term suspension.[6] A civil service commission's restriction of a policeman's cross-examination of a witness for the purpose of impeaching credibility is within the commission's sound discretion and thus is not a denial of equal protection.[7]

A statute authorizing the summary suspension of a city police officer for a stated period, when construed as entitling the officer to review of the suspension, is not violative of equal protection.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Baker v. Cawley, 459 F. Supp. 1301 (S.D. N.Y. 1978), aff'd, 607 F.2d 994 (2d Cir. 1979).

2 U.S.—Ahearn v. DiGrazia, 412 F. Supp. 638 (D. Mass. 1976), judgment aff'd, 429 U.S. 876, 97 S. Ct. 225, 50 L. Ed. 2d 160 (1976).

3 U.S.—Zeigler v. Jackson, 638 F.2d 776 (5th Cir. 1981).

4 Iowa—Van Baale v. City of Des Moines, 550 N.W.2d 153 (Iowa 1996).

5 Ind.—Gansert v. Meeks, 179 Ind. App. 209, 384 N.E.2d 1140 (1979).

6 Ill.—People ex rel. Blanks v. Ruddell, 1 Ill. App. 3d 662, 274 N.E.2d 835 (1st Dist. 1971).
Mo.—Belton v. Board of Police Com'rs of Kansas City, 708 S.W.2d 131 (Mo. 1986).

7 Ind.—King v. City of Gary, 260 Ind. 459, 296 N.E.2d 429 (1973).

8 Ill.—Kropel v. Conlisk, 60 Ill. 2d 17, 322 N.E.2d 793 (1975).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1460

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

d. Labor Organizations

§ 1460. Restriction on collective bargaining subject to rational basis analysis

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3599, 3600

The constitutionality of recognition of labor organizations of public employees, and of statutes granting or denying public employees the right to collectively bargain, is reviewed under the rational basis test.

Collective bargaining is not a fundamental right, and a union and its members are not suspect classes for purposes of equal protection review.[1] The rational basis test[2] is applied to determine the constitutionality of a public employer's recognition of a particular union as its employees' exclusive bargaining agent.[3] Similarly, statutes granting[4] or denying[5] public employees the right to bargain collectively have been declared valid under the rational basis test. Thus, in light of the different functions that management and collective bargaining employees perform, there is a legitimate public purpose for denying managers the right to collectively bargain,[6] and treating police captains, who are considered management, differently from bargaining unit police officers.[7]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

With respect to school employees, equal protection is not denied by statutes precluding collective bargaining on certain subjects,[8] such as standards with regard to the workload of state university professors.[9] Additionally, a statute restricting collective bargaining rights of general public employees but exempting public safety employees from those restrictions did not violate the Equal Protection Clause; the differential treatment of general and public safety unions had a rational basis and was supported by its concern for labor peace among the public safety employees.[10] However, a statute denying collective bargaining rights to the employees of only one city, which were enjoyed by all other similarly situated municipal employees in the state, violated equal protection.[11]

The grant of access to employee mailboxes to the exclusive bargaining representative of public employees, while denying it to other employee organizations, is not a denial of equal protection to the rival organizations where the policy rationally furthers legitimate state purposes.[12]

CUMULATIVE SUPPLEMENT

Cases:

A state does not engage in viewpoint discrimination in violation of the First Amendment by simply disclosing the personal information of public or quasi-public employees to the employees exclusive collective bargaining representative, while denying equal access to the public. U.S. Const. Amend. 1. Boardman v. Inslee, 978 F.3d 1092 (9th Cir. 2020).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Sweeney v. Pence, 767 F.3d 654 (7th Cir. 2014).

2 § 1279.

3 Pa.—Philadelphia Fraternal Order of Correctional Officers v. Rendell, 558 Pa. 229, 736 A.2d 573 (1999).

4 Ill.—Naperville Police Union, Local 2233, American Federation of State, County and Municipal Emp. AFL-CIO v. City of Naperville, 97 Ill. App. 3d 153, 52 Ill. Dec. 660, 422 N.E.2d 869 (2d Dist. 1981).
Policy in favor of only one representative rationally served
U.S.—Minnesota State Bd. for Community Colleges v. Knight, 465 U.S. 271, 104 S. Ct. 1058, 79 L. Ed. 2d 299, 15 Ed. Law Rep. 1050 (1984).

5 N.Y.—Shelofsky v. Helsby, 32 N.Y.2d 54, 343 N.Y.S.2d 98, 295 N.E.2d 774 (1973).
Police officers
U.S.—Fraternal Order of Police v. Mayor and City Council of Ocean City, Md., 916 F.2d 919 (4th Cir. 1990).
Ill.—Naperville Police Union, Local 2233, American Federation of State, County and Municipal Emp. AFL-CIO v. City of Naperville, 97 Ill. App. 3d 153, 52 Ill. Dec. 660, 422 N.E.2d 869 (2d Dist. 1981).

6 Conn.—State Management Ass'n of Connecticut, Inc. v. O'Neill, 204 Conn. 746, 529 A.2d 1276 (1987).

7 Conn.—Fennell v. City of Hartford, 238 Conn. 809, 681 A.2d 934 (1996).

8 Mich.—Michigan State AFL-CIO v. Employment Relations Com'n, 453 Mich. 362, 551 N.W.2d 165, 111 Ed. Law Rep. 490 (1996).

9 U.S.—Central State University v. American Ass'n of University Professors, Central State University Chapter, 526 U.S. 124, 119 S. Ct. 1162, 143 L. Ed. 2d 227, 133 Ed. Law Rep. 34 (1999).

10 U.S.—Wisconsin Educ. Ass'n Council v. Walker, 705 F.3d 640, 84 Fed. R. Serv. 3d 1143 (7th Cir. 2013).

11 Ohio—State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Employment Relations Bd., 22 Ohio St. 3d 1, 488 N.E.2d 181 (1986).

12 U.S.—Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d 794, 9 Ed. Law Rep. 23 (1983).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1461

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

d. Labor Organizations

§ 1461. Statutes denying right to strike

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3599, 3600

Statutes prohibiting strikes by all or certain public employees do not violate equal protection.

Statutes prohibiting strikes by public employees do not deny those employees equal protection where they are rationally related to legitimate state interests.[1] Thus, statutes denying teachers the right to strike have been upheld.[2] Similarly, the granting of the right to strike to one group of public employees does not constitute a denial of equal protection to another group forbidden to strike where approved reasons exist for the differentiation.[3] The mere failure to enforce a statute prohibiting strikes by public employees against other public employees similarly situated is not a denial of equal protection, absent a showing that this was pursuant to an intentional and invidious plan of discrimination by the State.[4]

Equal protection is not denied, even though some striking public employees are given a lesser punishment than that given to others, where the difference is rationally related to the fulfillment of legitimate state purposes.[5]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—United Steelworkers of America, AFL-CIO v. University of Alabama in Birmingham, 430 F. Supp. 996 (N.D. Ala. 1977), judgment aff'd, 599 F.2d 56 (5th Cir. 1979); United Federation of Postal Clerks v. Blount, 325 F. Supp. 879 (D.D.C. 1971), judgment aff'd, 404 U.S. 802, 92 S. Ct. 80, 30 L. Ed. 2d 38 (1971).

2 Alaska—Anchorage Educ. Ass'n v. Anchorage School Dist., 648 P.2d 993, 5 Ed. Law Rep. 1010 (Alaska 1982).
Idaho—School Dist. No. 351 Oneida County v. Oneida Ed. Ass'n, 98 Idaho 486, 567 P.2d 830 (1977).
Ky.—Jefferson County Teachers Ass'n v. Board of Ed. of Jefferson County, 463 S.W.2d 627 (Ky. 1970).
R.I.—School Committee of Town of Westerly v. Westerly Teachers Ass'n, 111 R.I. 96, 299 A.2d 441 (1973).

3 Cal.—City of San Diego v. American Federation of State etc. Employees, 8 Cal. App. 3d 308, 87 Cal. Rptr. 258 (4th Dist. 1970) (disapproved of on other grounds by, County Sanitation Dist. No. 2 v. Los Angeles County Employees Assn., 38 Cal. 3d 564, 214 Cal. Rptr. 424, 699 P.2d 835 (1985)).

4 N.Y.—Di Maggio v. Brown, 19 N.Y.2d 283, 279 N.Y.S.2d 161, 225 N.E.2d 871 (1967).

5 Ill.—Battle v. Illinois Civil Service Commission, 78 Ill. App. 3d 828, 33 Ill. Dec. 597, 396 N.E.2d 1321 (1st Dist. 1979).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1462

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

d. Labor Organizations

§ 1462. Statutes mandating arbitration

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3599, 3600

Statutes requiring compulsory arbitration of public employment disputes are upheld under the rational basis test.

State statutes providing for compulsory arbitration of employment disputes between public employees and state entities have been upheld under the rational basis test.[1] The exclusion of particular public employees from mandatory mediation and arbitration provisions does not violate equal protection where the classification applies evenly to all members of a designated class and was reasonable and related to the goals of the arbitration statute.[2]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Mich.—City of Detroit v. Detroit Police Officers Ass'n, 408 Mich. 410, 294 N.W.2d 68 (1980).
Wash.—City of Everett v. Fire Fighters, Local No. 350 of Intern. Ass'n of Fire Fighters, 87 Wash. 2d 572, 555 P.2d 418 (1976).

2 Wash.—Yakima County Deputy Sheriff's Ass'n v. Board of Com'rs for Yakima County, 92 Wash. 2d 831, 601 P.2d 936 (1979).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1463

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

d. Labor Organizations

§ 1463. Dues checkoff privileges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3600

The grant or denial of dues checkoff privileges to a public employees' union must meet a reasonableness test.

The grant or denial of dues checkoff privileges by a public entity to a public employees' union is required, as against an equal protection challenge, to meet only a relatively relaxed standard of reasonableness to survive constitutional scrutiny.[1] It is reasonable for a public employer to refuse to continue to provide gratuitously the checkoff of union dues when checkoff privileges will be a proper subject for future negotiations.[2] It is also not a denial of equal protection for municipal employers to refuse to deduct labor organization dues from the paychecks of general employees, while permitting employers to deduct membership dues for other organizations, where the decision was founded on the State's rational belief that labor organizations were costly to the State.[3]

The granting by a public employer of exclusive dues checkoff privileges to the union representing a majority of public employees in a bargaining unit, while denying those privileges to a minority union, does not constitute a denial of equal protection as

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

the distinction is reasonably designed to maintain labor stability.[4] Additionally, a statute barring automatic deduction of union dues from paychecks of public employees represented by general public employee unions but permitting such deductions from paychecks of public safety employee union members did not violate the Equal Protection Clause; the differential treatment of general and public safety unions was supported by concern for labor peace among the public safety employees.[5] Similarly, a public employer's refusal to withhold union dues, under the rationale of allowing withholding only when it benefits all employees, is not a denial of equal protection since it is a legitimate method for avoiding the burden of withholding money for any organization that requests a checkoff.[6]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—City of Charlotte v. Local 660, Intern. Ass'n of Firefighters, 426 U.S. 283, 96 S. Ct. 2036, 48 L. Ed. 2d 636 (1976).
Me.—Maine State Employees Ass'n v. University of Maine, 395 A.2d 829 (Me. 1978).

2 Me.—Maine State Employees Ass'n v. University of Maine, 395 A.2d 829 (Me. 1978).

3 Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

4 U.S.—Memphis Am. Federation of Teachers, Local 2032 v. Board of Ed. of Memphis City Schools, 534 F.2d 699 (6th Cir. 1976).
N.Y.—Bauch v. City of New York, 21 N.Y.2d 599, 289 N.Y.S.2d 951, 237 N.E.2d 211 (1968).

5 U.S.—Wisconsin Educ. Ass'n Council v. Walker, 705 F.3d 640, 84 Fed. R. Serv. 3d 1143 (7th Cir. 2013).

6 U.S.—City of Charlotte v. Local 660, Intern. Ass'n of Firefighters, 426 U.S. 283, 96 S. Ct. 2036, 48 L. Ed. 2d 636 (1976).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1464

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

e. Promotion and Tenure

§ 1464. Broad discretion allowed

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3594

Classifications dealing with promotion in public employment are tested under the traditional minimum rationality test.

Not every difference in promotion treatment rises to the level of a constitutional deprivation under equal protection principles.[1] An equal protection claim does not arise in the public employment context where one employee is given a promotion over another employee because such a decision is based on the broad discretion that typically characterizes the employer-employee relationship.[2]

Various criteria applicable to promotions in public employment, such as those dealing with seniority credit,[3] preference for veterans,[4] tenure rights,[5] and educational requirements[6] have been upheld under the rational basis test.

A state court had a rational basis to prohibit a deputy court administrator, who was in a live-in relationship with a district court judge, from obtaining a promotion, and thus, the administrator was not denied equal protection of law. The court had an

interest in antinepotic policies, and while an administrative order, which set forth the court's "anti-nepotism" policy, was applied differently towards two brothers since one of the brothers was elected to office and the other brother was protected by a union, neither brother was advanced or promoted since their working relationship began.[7]

A public employee demoted for failing to obtain a required certification within the allotted time is not denied equal protection if it was reasonable to require certification for the higher position and there was no evidence that any similarly situated employee was treated differently.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Clark v. Whiting, 607 F.2d 634 (4th Cir. 1979); Sam v. U. S., 230 Ct. Cl. 596, 682 F.2d 925 (1982).
Departure from rating guidelines
Supervisor's purported departure from guidelines for rating candidates for supervisory positions did not violate employee's rights to equal protection, absent demonstration of purposeful discrimination.
U.S.—Smith v. State of Ga., 684 F.2d 729 (11th Cir. 1982).

2 U.S.—Novotny v. Tripp County, S.D., 664 F.3d 1173 (8th Cir. 2011).

3 U.S.—Uniformed Firefighters Ass'n, Local 94, IAFF, AFL-CIO v. City of New York, 676 F.2d 20 (2d Cir. 1982).
Ind.—Heminger v. Police Commission of City of Fort Wayne, 161 Ind. App. 72, 314 N.E.2d 827 (1974).

4 Kan.—State ex rel. Slusher v. City of Leavenworth, 285 Kan. 438, 172 P.3d 1154 (2007).

5 Wis.—Department of Health and Social Services v. State Personnel Bd., 84 Wis. 2d 675, 267 N.W.2d 644 (1978).

6 Iowa—Bryan v. City of Des Moines, 261 N.W.2d 685 (Iowa 1978).

7 U.S.—Pucci v. Michigan Supreme Court, 601 F. Supp. 2d 886 (E.D. Mich. 2009).

8 Ga.—Sears v. Dickerson, 278 Ga. 900, 607 S.E.2d 562 (2005).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1465

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

e. Promotion and Tenure

§ 1465. Dismissal, layoff, or abolition of position

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3595

Decisions regarding dismissals, layoffs, or the abolition of positions in the public work force must meet the rational basis test.

One may not be dismissed from public employment in a manner that is violative of the Equal Protection Clause of the Fourteenth Amendment.[1] Thus, a public employer's unreasonable discrimination with regard to appeal rights in connection with the dismissal of employees is a denial of equal protection.[2] However, the equal protection rights of a dismissed public employee are not violated if there was no other coworker with an unsatisfactory performance rating.[3]

Probationary periods for public employees are valid under the rational basis test[4] as is the dismissal of employees during a probationary period.[5] The dismissal of appointed employees at the pleasure of the appointing authority has also been upheld.[6] Equal protection does not prohibit a state from providing different processes for the removal of officials in different political subdivisions of the state.[7]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Giving veterans certain preferences for retention upon the abolition of positions for economic reasons does not violate equal protection since the classification is substantially related to the objective of expressing the State's gratitude to its citizens who serve in time of war and to encourage their return to government service.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Neb.—Voichahoske v. City of Grand Island, Hall County, 194 Neb. 175, 231 N.W.2d 124 (1975).

2 U.S.—Fowler v. U.S., 633 F.2d 1258 (8th Cir. 1980).
La.—Mixon v. New Orleans Police Dept., 407 So. 2d 793 (La. Ct. App. 4th Cir. 1981).

3 U.S.—McPhaul v. Board of Com'rs of Madison County, 226 F.3d 558 (7th Cir. 2000) (overruled on other grounds by, Hill v. Tangherlini, 724 F.3d 965, 86 Fed. R. Serv. 3d 206 (7th Cir. 2013)).
As to the discipline and discharge of public employees, see § 1458.

4 U.S.—Russell v. Hodges, 470 F.2d 212 (2d Cir. 1972).

5 U.S.—Eichman v. Indiana State University Bd. of Trustees, 597 F.2d 1104 (7th Cir. 1979).

6 Ariz.—White v. Superior Court In and For Pima County, 25 Ariz. App. 438, 544 P.2d 262 (Div. 2 1975).
Cal.—Abel v. Cory, 71 Cal. App. 3d 589, 139 Cal. Rptr. 555 (3d Dist. 1977).
Mo.—Amaan v. City of Eureka, 615 S.W.2d 414 (Mo. 1981).

7 Ga.—Smith v. Abercrombie, 235 Ga. 741, 221 S.E.2d 802 (1975).

8 U.S.—Koch v. Yunich, 533 F.2d 80 (2d Cir. 1976); Fredrick v. U. S., 205 Ct. Cl. 791, 507 F.2d 1264 (1974).
Ga.—Boykin v. Strickland, 245 Ga. 294, 264 S.E.2d 225 (1980).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1466

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

e. Promotion and Tenure

§ 1466. Mandatory retirement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3596

Mandatory retirement requirements for judges and firefighters, as allowed by the Age Discrimination in Employment Act, generally do not violate equal protection.

In evaluating whether a mandatory retirement statute bears a reasonable and just relation to a governmental purpose as required by the Equal Protection Clause, a court may consider three factors: (1) significance of the benefits to the excluded group, (2) whether the omission of a part of the community promotes the government's stated goals, and (3) whether the classification is overinclusive or underinclusive.[1]

A mandatory retirement provision for judges reaching a certain age does not violate equal protection, since it could be rationally determined that judges' physical and mental capacities would diminish with age and, unlike the case with other state officials, the election process might be inadequate to determine which judges' performance had become deficient.[2] An exception permitting judges of higher courts to receive certification to continue in office also does not violate equal protection, given that the cases

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

that are heard in those courts may rationally be deemed to require greater experience and manpower than necessary in the other courts.[3]

Firefighters in supervisory positions who were subject to mandatory retirement under state law were not deprived of equal protection through an exception to the Age Discrimination in Employment Act that permits the mandatory retirement of law enforcement officers and firefighters[4] since the age classification has a rational relationship to a legitimate state interest of providing states and localities with the same flexibility as the federal government in requiring the retirement of certain types of employees and to preserve the morale of younger officers and firefighters who aspire to administrative or supervisory positions.[5] Mandatory retirement for police officers and firefighters is also rationally related to furthering the objective of insuring the physical ability of those personnel.[6]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Vt.—Badgley v. Walton, 188 Vt. 367, 2010 VT 68, 10 A.3d 469 (2010).

2 U.S.—Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).
Also does not violate voters' rights
N.C.—Martin v. State, 330 N.C. 412, 410 S.E.2d 474 (1991).

3 N.Y.—Maresca v. Cuomo, 64 N.Y.2d 242, 485 N.Y.S.2d 724, 475 N.E.2d 95 (1984).

4 29 U.S.C.A. § 623(j), discussed in C.J.S., Civil Rights § 268.

5 N.J.—Boylan v. State, 116 N.J. 236, 561 A.2d 552 (1989).

6 R.I.—Power v. City of Providence, 582 A.2d 895 (R.I. 1990).
Vt.—Badgley v. Walton, 188 Vt. 367, 2010 VT 68, 10 A.3d 469 (2010).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1467

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

f. Compensation

§ 1467. Disparities valid when rationally related to legitimate purpose

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3596

Compensation disparities among public employees do not violate equal protection if the differences are rationally related to a legitimate state purpose.

Controversies involving compensation in public office or employment are subject to equal protection challenge[1] based on the rational basis standard.[2] Compensation disparities are valid when the differences are rationally related to a legitimate state purpose,[3] but where there is no rational basis for the classification, compensation disparities deny equal protection.[4] For instance, a pay disparity based on the scope of duties and responsibilities is permissible.[5] Additionally, state constitutional provisions prohibiting any change in the salary of any officer during the term of office have been declared valid under the rational basis standard.[6]

Federal employees are protected from arbitrary and discriminatory pay classifications; however, equal protection is not denied if the goals sought are legitimate and the classification has some reasonable basis.[7]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Government actions may be rationally related to effectuating a legitimate interest in preserving a pay classification system.[8] A multistep pay schedule may be based on legitimate economic considerations,[9] thus justifying it under a rational basis standard.[10] A schedule establishing a maximum salary level does not violate equal protection since there is a reasonable relationship to a governmental interest in maintaining the fiscal integrity of the personnel system.[11]

Judges.

Compensation disparities among judges in various judicial systems have been declared valid under the rational basis test of equal protection,[12] such as where the classification is based on population[13] or related to caseloads.[14] A state constitutional amendment permitting in-term salary increases for judges of certain courts, but not others, is not a denial of equal protection.[15] On the other hand, a statute violates equal protection to the extent that it permits increased salaries for magistrates in certain counties but not to ones in counties with the same general population per magistrate.[16]

Overtime.

Statutes that do not require the payment of certain rates of overtime compensation to policemen or firemen have been recognized as constitutionally appropriate under the rational basis standard, due to the special function these individuals perform and scheduling problems.[17] Similarly, policies may differ as to the number of hours particular employees must work before being paid overtime, without implicating equal protection rights.[18]

CUMULATIVE SUPPLEMENT

Cases:

Probate judges were not similarly situated to magistrate judges for compensation purposes, and therefore county's payment of longevity increases to magistrate judges and not probate judges was not violation of probate judge's equal protection rights; state constitution created magistrate judges and probate judges as separate classes with separate jurisdictions, and statutes set forth separate jurisdiction, duties, and qualifications. U.S.C.A. Const.Amend. 14; West's Ga.Const. Art. 1, § 1, Par. 2, Art. 6, § 3, Par. 1; West's Ga.Code Ann. §§ 15–1–1 et seq., 15–9–63, 15–9–65. Lewis v. Chatham County Bd. of Com'rs, 779 S.E.2d 371 (Ga. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 N.Y.—Abrams v. Bronstein, 33 N.Y.2d 488, 354 N.Y.S.2d 926, 310 N.E.2d 528 (1974).

2 Iowa—Kelly v. State, 525 N.W.2d 409 (Iowa 1994).
N.Y.—Cassata v. State, 115 A.D.3d 1209, 982 N.Y.S.2d 260 (4th Dep't 2014), appeal dismissed, 23 N.Y.3d 1005, 992 N.Y.S.2d 767, 16 N.E.3d 1245 (2014).

3 Ind.—County Dept. of Public Welfare of Marion County v. City-County Council of Marion County, 167 Ind. App. 334, 338 N.E.2d 656 (1975).
Iowa—Bartel v. Johnson County, 322 N.W.2d 901 (Iowa Ct. App. 1982).

Pa.—Keystone Chapter of Associated Builders and Contractors, Inc. v. Com., Dept. of Labor and Industry, 51 Pa. Commw. 586, 414 A.2d 1129 (1980).

Limiting compensation of attorneys in certain districts

Ky.—Com. ex rel. Hancock v. Davis, 521 S.W.2d 823 (Ky. 1975).

Wage freeze

N.Y.—Subway-Surface Sup'rs Ass'n v. New York City Transit Authority, 44 N.Y.2d 101, 404 N.Y.S.2d 323, 375 N.E.2d 384 (1978).

4 N.J.—Essex County Welfare Bd. v. Klein, 149 N.J. Super. 241, 373 A.2d 691 (App. Div. 1977).

Wash.—Washington Public Employees Ass'n v. State, 127 Wash. App. 254, 110 P.3d 1154 (Div. 2 2005).

Exemption of sheriff of specific parish from statutory classification

La.—Wattigny v. State, 257 La. 945, 244 So. 2d 842 (1971).

Freeze on cost-of-living increases

Where state could not constitutionally impair existing contracts by invalidating existing agreements by local agencies to pay cost-of-living increases, equal protection likewise required that limitations on cost-of-living increases not be imposed on other employees who did not have contractual rights to increased wages.

Cal.—Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal. 3d 296, 152 Cal. Rptr. 903, 591 P.2d 1 (1979).

Different treatment of unused leave when employee is terminated or retires

S.C.—Littlefield v. South Carolina Forestry Com'n, 337 S.C. 348, 523 S.E.2d 781 (1999).

5 Tenn.—Sneyd v. Washington County, 387 S.W.3d 1 (Tenn. Ct. App. 2012).

6 U.S.—Musser v. Morton, 639 F.2d 309 (6th Cir. 1981).

Mont.—Shubat v. State, 157 Mont. 143, 484 P.2d 278 (1971).

Okla.—Presley v. Board of County Com'rs of Oklahoma County, 1999 OK 45, 981 P.2d 309 (Okla. 1999).

Pa.—Bakes v. Snyder, 486 Pa. 80, 403 A.2d 1307 (1979).

7 U.S.—Medler v. U.S., Bureau of Reclamation, Dept. of Interior, 616 F.2d 450 (9th Cir. 1980).

8 Mont.—Matter of Mead, 235 Mont. 208, 766 P.2d 1300 (1988).

9 W. Va.—Largent v. West Virginia Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994).

10 N.H.—Petition of State Employees' Ass'n of New Hampshire, Inc., 129 N.H. 536, 529 A.2d 968, 41 Ed. Law Rep. 239 (1987).

11 U.S.—McCorkle v. U.S., 559 F.2d 1258 (4th Cir. 1977).

Colo.—Dempsey v. Romer, 825 P.2d 44 (Colo. 1992).

12 Conn.—Eielson v. Parker, 179 Conn. 552, 427 A.2d 814 (1980).

Tenn.—Barry v. Wilson County, 610 S.W.2d 441 (Tenn. Ct. App. 1980).

13 Fla.—Lewis v. Mathis, 345 So. 2d 1066 (Fla. 1977).

W. Va.—State ex rel. West Virginia Magistrates Ass'n v. Gainer, 175 W. Va. 359, 332 S.E.2d 814 (1985).

N.Y.—Cassata v. State, 115 A.D.3d 1209, 982 N.Y.S.2d 260 (4th Dep't 2014), appeal dismissed, 23 N.Y.3d 1005, 992 N.Y.S.2d 767, 16 N.E.3d 1245 (2014).

14 N.Y.—Friia v. Pfau, 121 A.D.3d 750, 994 N.Y.S.2d 151 (2d Dep't 2014).

15 U.S.—Ohio Municipal Judges Ass'n v. Davis, 411 U.S. 144, 93 S. Ct. 1245, 36 L. Ed. 2d 113 (1973).

16 W. Va.—State ex rel. Longanacre v. Crabtree, 177 W. Va. 132, 350 S.E.2d 760 (1986).

17 Cal.—Los Angeles Fire & Police Protective League v. City of Los Angeles, 23 Cal. App. 3d 67, 99 Cal. Rptr. 908 (2d Dist. 1972).

N.J.—New Jersey State Police Benev. Ass'n v. Mayor and Council of Irvington, 121 N.J. Super. 321, 297 A.2d 10 (App. Div. 1972).

Ohio—Meeks v. Papadopulos, 62 Ohio St. 2d 187, 16 Ohio Op. 3d 212, 404 N.E.2d 159 (1980).

18 Va.—Buchanan v. City of Chesapeake, 237 Va. 50, 375 S.E.2d 736 (1989).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1468

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

f. Compensation

§ 1468. Pension plans and benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3596

Public employee benefit plans need only meet a rational relationship test to be sustained in the face of an equal protection challenge.

A public employees' benefit plan is presumed constitutional under the right to equal protection if a classification drawn by it is rationally related to a legitimate governmental interest.[1] Various classifications with respect to public employee retirement plans have been upheld under the rational basis standard, such as the exclusion of certain public employees from a retirement system,[2] new restrictions on withdrawing contributions to a plan,[3] and allowing a particular class of employees to apply for benefits at an earlier age than other employees.[4] Policies upheld, in the face of equal protection challenges, relating to the accrual of retirement plan credits include contribution requirements,[5] the right of certain classes of employees to purchase additional credits,[6] a grace period for returning to covered employment,[7] different credits based on whether an employee was a member of a bargaining unit,[8] the accrual of unused sick leave toward service credit,[9] and differing methods of credit for military service.[10] However,

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

certain other classifications have been found unreasonable where there was no rational basis for the disparity in treatment of various classes of employees or beneficiaries by a pension system.[11]

A statute authorizing different pension benefits for different classes of state employees does not violate equal protection.[12] Generally, retirement benefits must meet only a minimum rationality test; benefits must be reasonably classified, not arbitrary, and must treat all persons in similar circumstances alike.[13] When determining whether differences in pension benefits violate the Equal Protection Clause, the proper test is whether the differential treatment bears a rational relationship to a legitimate state interest.[14] Equal protection is not offended by increasing a monthly retirement allowance except for early retirees,[15] offering increased retirement benefits as an inducement to remain working in a financially depressed city,[16] or refusing to offer disabled firefighters a lump-sum retirement payment.[17] However, a distinction in benefits for widows of firefighters, based only on the size of the city, is not rationally related to a legitimate government goal of maintaining fiscal certainty and thus denies equal protection to excluded surviving spouses.[18]

A provision that a deceased retiree's estate, rather than a divorced spouse, becomes the beneficiary upon the retiree's death does not violate equal protection, where a member of the retirement system has no other means of changing his or her beneficiary after retiring, and it is likely that the member no longer desired to support a former spouse.[19] A provision restricting surviving spouse benefits to a spouse who was residing with the member at the time of the retiree's death has the rational basis of preventing payments to participants in sham marriages and encouraging secondary beneficiaries to care for the retiree.[20]

A statute that authorizes the reduction or suspension of pension benefits for retired state judges upon continued state or federal employment does not violate equal protection.[21] Additionally, the forfeiture of a judge's entire accrued pension after he was removed from office due to judicial misconduct did not violate equal protection because the State had a legitimate state interest in upholding the independence, integrity, and professionalism of the judiciary.[22]

CUMULATIVE SUPPLEMENT

Cases:

Civil Service Commission acquiesced in application of State Employees Retirement Act (SERA) to the employees of the civil service system, and therefore legislature's amendment to State Employees Retirement Act (SERA) that increased cost and reduced accumulation of future pension benefits previously recognized did not violate separation of powers clause of state constitution, where Commission enacted rule that provided that "a classified employee is eligible for retirement benefits as provided by law." M.C.L.A. Const. Art. 11, § 5. Coalition of State Emp. Unions v. State, 498 Mich. 312, 870 N.W.2d 275 (2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Minn.—Kolton v. County of Anoka, 645 N.W.2d 403 (Minn. 2002).
Ohio—State ex rel. Solomon v. Police & Firemen's Disability & Pension Fund Bd. of Trustees, 72 Ohio St. 3d 62, 1995-Ohio-172, 647 N.E.2d 486 (1995).
Improving fiscal viability of pension fund
Pa.—Harper v. State Employees' Retirement System, 538 Pa. 520, 649 A.2d 643 (1994).
Cost of maintaining certain retirees

Wis.—Wisconsin Professional Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807 (2001).

2 Ga.—Belk v. Westbrooks, 266 Ga. 628, 469 S.E.2d 149 (1996).
Wash.—Automobile Drivers & Demonstrators Union Local No. 882 v. Department of Retirement Systems, 92 Wash. 2d 415, 598 P.2d 379 (1979).

3 Utah—Franklin v. Utah State Retirement Bd., 779 P.2d 680, 56 Ed. Law Rep. 312 (Utah 1989).

4 Pa.—Geary v. Retirement Bd. of Allegheny County, 426 Pa. 254, 231 A.2d 743 (1967).

5 U.S.—Rosario v. Retirement Bd. of Policemen's Annuity and Ben. Fund for City of Chicago, 743 F.3d 531 (7th Cir. 2014).
Ala.—Employees' Retirement System of Alabama v. Oden, 369 So. 2d 4 (Ala. 1979).

6 Ala.—Ex parte Bronner, 623 So. 2d 296 (Ala. 1993).

7 S.C.—Stuckey v. State Budget and Control Bd., 339 S.C. 397, 529 S.E.2d 706 (2000).

8 Conn.—Fennell v. City of Hartford, 238 Conn. 809, 681 A.2d 934 (1996).

9 W. Va.—Courtney v. State Dept. of Health of West Virginia, 182 W. Va. 465, 388 S.E.2d 491 (1989).

10 Ga.—Horton v. State Employees Retirement System, 262 Ga. 458, 421 S.E.2d 703 (1992).
N.Y.—O'Connor v. Levitt, 51 A.D.2d 1090, 381 N.Y.S.2d 341 (3d Dep't 1976).
Wash.—Fuller v. State, Dept. of Retirement Systems, 106 Wash. 2d 822, 725 P.2d 972 (1986).
§ 1598.

11 Ala.—Barbour County Com'n v. Employees of Barbour County Sheriff's Dept., 566 So. 2d 493 (Ala. 1990).
Ga.—Employees' Retirement System of Georgia v. Martin, 272 Ga. 535, 533 S.E.2d 68 (2000).

12 Md.—Hargrove v. Board of Trustees of Maryland Retirement System, 310 Md. 406, 529 A.2d 1372 (1987).

13 Wash.—Automobile Drivers & Demonstrators Union Local No. 882 v. Department of Retirement Systems, 92 Wash. 2d 415, 598 P.2d 379 (1979).

14 Colo.—Carter v. Firemen's Pension Fund of City and County of Denver, 634 P.2d 410 (Colo. 1981).
Mich.—Harvey v. State, Dept. of Management and Budget, Bureau of Retirement Services, 469 Mich. 1, 664 N.W.2d 767 (2003).
Mo.—Missouri Prosecuting Attorneys and Circuit Attorneys Retirement System v. Pemiscot County, 256 S.W.3d 98 (Mo. 2008).
Nev.—Allen v. State, 100 Nev. 130, 676 P.2d 792 (1984).
Pa.—Klein v. Com., State Employees' Retirement System, 521 Pa. 330, 555 A.2d 1216 (1989).

15 Nev.—Allen v. State, 100 Nev. 130, 676 P.2d 792 (1984).

16 Mich.—Harvey v. State, Dept. of Management and Budget, Bureau of Retirement Services, 469 Mich. 1, 664 N.W.2d 767 (2003).

17 Neb.—Bauers v. City of Lincoln, 255 Neb. 572, 586 N.W.2d 452 (1998).

18 Colo.—Branson v. City and County of Denver, 707 P.2d 338 (Colo. 1985).

19 Ky.—Weiand v. Board of Trustees of Kentucky Retirement Systems, 25 S.W.3d 88 (Ky. 2000).

20 Minn.—Scott v. Minneapolis Police Relief Ass'n, Inc., 615 N.W.2d 66 (Minn. 2000).

21 Md.—Hargrove v. Board of Trustees of Maryland Retirement System, 310 Md. 406, 529 A.2d 1372 (1987).

22 Pa.—Berkhimer v. State Employees' Retirement Bd., 60 A.3d 873 (Pa. Commw. Ct. 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1469

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

f. Compensation

§ 1469. Disability benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3596

Distinctions associated with disability plans may be sustained under the rational relationship test.

A law governing disability benefits for public employees may only include local units of government under a certain size without violating equal protection where the legislature could have reasonably concluded that the employees in larger cities possessed sufficient bargaining strength and expertise to obtain disability benefits equivalent to those provided under the statute.[1] A disability plan for public employees that provided different benefits for mental and physical disabilities was rationally related to the legitimate governmental interest of providing the same plan to all county employees while maintaining the county's fiscal integrity and thus did not violate the employees' right to equal protection.[2]

The reduction of disability retirement benefits by the amount of workers' compensation and Social Security disability benefits, while not making the same reduction in the case of ordinary retirement benefits, does not violate equal protection as this rationally advances the legitimate goal of adequately funding the retirement system.[3] A policy prohibiting state employees who are receiving temporary total disability (TTD) benefits from also accruing sick leave benefits and from receiving holiday pay

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

are reasonably related to a proper government purpose and thus do not violate equal protection because such policies and rules are justifiable in order to avoid a duplication in benefits; however, policies and rules prohibiting those employees from also accruing credit for years of service are not related to a proper government purpose and, therefore, violate the equal protection clause of a state constitution.[4]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Ill.—Nevitt v. Langfelder, 157 Ill. 2d 116, 191 Ill. Dec. 36, 623 N.E.2d 281 (1993).

2 Minn.—Kolton v. County of Anoka, 645 N.W.2d 403 (Minn. 2002).

3 Idaho—Osick v. Public Employee Retirement System of Idaho, 122 Idaho 457, 835 P.2d 1268 (1992).
Me.—Dishon v. Maine State Retirement System, 569 A.2d 1216 (Me. 1990).

4 W. Va.—Canfield v. West Virginia Div. of Corrections, 217 W. Va. 340, 617 S.E.2d 887 (2005).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law VI XVII G Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3610, 3613(1), 3613(2), 3614, 3617(1) to 3617(4), 3618(1) to 3618(5), 3623, 3624, 3626(1) to 3626(6), 3627(1) to 3627(4), 3628

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
A.L.R. Index, Private and Parochial Schools
A.L.R. Index, School Board
A.L.R. Index, Schools and Education

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1470

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1470. Level of scrutiny

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3610

Public education is subject to equal protection guarantees, although strict scrutiny is generally required only with regard to racial discrimination, or under some state constitutions.

Education is not among the rights afforded explicit or implicit protection under the U.S. Constitution[1] and is not a fundamental right that would trigger strict scrutiny of claims of denial of equal protection[2] in the absence of a showing of discriminatory intent.[3] However, a strict scrutiny standard of review applies to a challenge to a statute affecting schools that implicates race.[4] Furthermore, under an analysis of the equal protection clause of a state constitution, under which education is deemed a fundamental right, interference with that right is subject to strict judicial scrutiny.[5]

Under the rational basis test, the Federal Equal Protection Clause is not violated by treating public and nonpublic school children differently in allocations of state aid and educationally related resources.[6] The Equal Protection Clause requires that the privilege of using school facilities must be available on a reasonable basis.[7] An ordinance prohibiting picketing near a school, while exempting peaceful picketing of a school involved in a labor dispute, is violative of equal protection.[8]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

The rational relationship test is properly applied when determining the validity of a special purpose referendum relating to the closing of a school building on which only a portion of the electorate in the school district is permitted to vote.[9]

CUMULATIVE SUPPLEMENT

Cases:

Neither education nor free transportation to school is fundamental right, deprivation of which is subject to strict scrutiny under Equal Protection Clause. U.S. Const. Amend. 14, § 1. St. Joan Antida High School Inc. v. Milwaukee Public School District, 919 F.3d 1003 (7th Cir. 2019).

Distinction between school districts that fully implemented an annual professional performance review (APPR) system and those that did not, with state aid withheld from non-complaint districts, did not involve a suspect classification that would warrant heightened scrutiny, beyond the rational basis test, for an equal protection violation. U.S.C.A. Const.Amend. 14; McKinney's Education Law §§ 3012–c, 3012–d(11). Aristy-Farer v. State, 143 A.D.3d 101, 40 N.Y.S.3d 7, 336 Ed. Law Rep. 1078 (1st Dep't 2016).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

2 U.S.—Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).
Ill.—Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).
Higher education
U.S.—Coalition to Defend Affirmative Action v. Brown, 674 F.3d 1128, 279 Ed. Law Rep. 66 (9th Cir. 2012).
Tex.—Richards v. League of United Latin American Citizens (LULAC), 868 S.W.2d 306 (Tex. 1993).

3 N.Y.—Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 631 N.Y.S.2d 565, 655 N.E.2d 661, 103 Ed. Law Rep. 1158 (1995).

4 U.S.—Evans v. Buchanan, 468 F. Supp. 944 (D. Del. 1979).

5 Conn.—Horton v. Meskill, 31 Conn. Supp. 377, 332 A.2d 113 (Super. Ct. 1974).

6 W. Va.—State ex rel. Cooper v. Board of Educ. of Summers County, 197 W. Va. 668, 478 S.E.2d 341, 114 Ed. Law Rep. 676 (1996).
A.L.R. Library
Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

7 Okla.—Hennessey v. Independent School Dist. No. 4, Lincoln County, 1976 OK 101, 552 P.2d 1141 (Okla. 1976).

8 U.S.—Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972); Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

9 Kan.—Provance v. Shawnee Mission Unified School Dist. No. 512, 231 Kan. 636, 648 P.2d 710, 5 Ed. Law Rep. 989 (1982).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1471

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1471. School funding

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3614, 3624

While school funding disparities are not subject to strict scrutiny review under the U.S. Constitution where the system does not operate to disadvantage any suspect class, greater scrutiny is required under some state constitutions.

On the basis that where wealth is involved, the Equal Protection Clause of the Fourteenth Amendment does not require absolute equality or precisely equal advantages, a school financing system that does not operate to the peculiar disadvantage of any suspect class is not subject strict judicial scrutiny.[1] While some state school financing systems have been upheld under state constitutions, applying a rational basis test,[2] another has failed this test.[3] In states where the rational basis test is applied, state constitutional provisions requiring the establishment and maintenance of a public school system or a general and uniform education system are limited to assuring that a basic funding level is maintained so that the goal stated in the constitution is met, and a public school financing system does not violate equal protection, if it provides sufficient funding to provide an adequate educational level.[4] Elsewhere, equal opportunity for education is a fundamental right for purposes of an equal protection analysis under a state constitution, requiring that a strict scrutiny or compelling interest test be applied.[5] Intermediate scrutiny[6] or some other standard[7] has also been applied in school finance cases brought under equal protection provisions of state constitutions.

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

While local control has been cited as a rational basis for a school funding scheme,[8] it did not provide a rational basis in another state,[9] and a different state's constitutional directive of local control for school districts did not permit spending disparities among school districts that adversely affect the state constitution's guarantee of equal educational opportunity, which was not merely an aspirational goal.[10]

A state constitutional provision permitting units of local governments with financial responsibility for public education to provide additional funding to supplement educational programs provided by the State is not in violation of the equal protection provision of the State's constitution, as the constitution could not be in violation of itself,[11] or the more specific provision allowing the additional funding prevails over the more general equal protection provisions.[12] While a statute allowing an additional levy authorized by referendum did not violate the equal protection clause of a state constitution, where the State provided an adequate education to all students,[13] a legislative scheme providing for optional additional tax levies created wealth-based disparities in violation of the equal protection section of another state's constitution.[14] A statute treating different kinds of public school districts differently with regard to the power to levy additional taxes was subject to an intermediate standard of review because it blatantly discriminated.[15]

A state board of education's payment of expenses incurred by certain school districts to comply with federal court desegregation decisions did not violate the equal protection rights of other school districts since the payment of desegregation costs was a legitimate, if not compelling, state interest.[16]

CUMULATIVE SUPPLEMENT

Cases:

Equal protection clause was not violated by statute allowing school district to impose property tax levy exceeding specified limit only if budget was approved by supermajority of at least 60% of voters; legislation was designed with legitimate goal of restraining onerous property tax increases that were believed to be depressing economic activity in State, and differences in services offered by various school districts resulted from permissible consequences of local control over schools. U.S.C.A. Const.Amend. 14; McKinney's Education Law § 2023–a. State United Teachers, ex rel. Magee v. State, 140 A.D.3d 90, 31 N.Y.S.3d 618, 330 Ed. Law Rep. 812 (3d Dep't 2016).

The performance of student subpopulations, especially a large group such as economically disadvantaged students who comprise more than 60 percent of students, is relevant to whether the public school system as a whole satisfies the state constitution's "general diffusion of knowledge" requirement, but a truly exceptional showing would be necessary for a ruling of constitutional inadequacy as to a "subpopulation," which could include students in certain grades or of certain ages, students of certain races, boys versus girls, or students with certain mental or physical disabilities. Tex. Const. art. 7, § 1. Morath v. The Texas Taxpayer and Student Fairness Coalition, 490 S.W.3d 826, 332 Ed. Law Rep. 1117 (Tex. 2016).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973).

2 U.S.—Petrella v. Brownback, 980 F. Supp. 2d 1293, 304 Ed. Law Rep. 533 (D. Kan. 2013).

Idaho—Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724, 82 Ed. Law Rep. 660 (1993).

Ill.—Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).

Iowa—Exira Community School Dist. v. State, 512 N.W.2d 787, 89 Ed. Law Rep. 965 (Iowa 1994).

Me.—School Administrative Dist. No. 1 v. Commissioner, Dept. of Educ., 659 A.2d 854, 101 Ed. Law Rep. 289 (Me. 1995).

Mo.—Committee for Educational Equality v. State, 294 S.W.3d 477, 249 Ed. Law Rep. 926 (Mo. 2009).

N.Y.—Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo, 86 N.Y.2d 279, 631 N.Y.S.2d 551, 655 N.E.2d 647, 103 Ed. Law Rep. 1144 (1995).

3 Tenn.—Tennessee Small School Systems v. McWherter, 851 S.W.2d 139, 82 Ed. Law Rep. 991 (Tenn. 1993).

4 Minn.—Skeen v. State, 505 N.W.2d 299 (Minn. 1993).

Okla.—Fair School Finance Council of Oklahoma, Inc. v. State, 1987 OK 114, 746 P.2d 1135, 43 Ed. Law Rep. 805 (Okla. 1987).

Wis.—Kukor v. Grover, 148 Wis. 2d 469, 436 N.W.2d 568, 52 Ed. Law Rep. 241 (1989).

5 Cal.—Butt v. State of California, 4 Cal. 4th 668, 15 Cal. Rptr. 2d 480, 842 P.2d 1240, 79 Ed. Law Rep. 1039 (1992).

N.J.—Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), on reargument on other grounds, 63 N.J. 196, 306 A.2d 65 (1973) and on reh'g on other grounds, 69 N.J. 133, 351 A.2d 713 (1975).

W. Va.—Kanawha County Public Library Bd. v. Board of Educ. of County of Kanawha, 231 W. Va. 386, 745 S.E.2d 424, 295 Ed. Law Rep. 340 (2013).

Wyo.—Campbell County School Dist. v. State, 907 P.2d 1238, 105 Ed. Law Rep. 771 (Wyo. 1995), as clarified on denial of reh'g, (Dec. 6, 1995).

6 N.D.—Bismarck Public School Dist. No. 1 v. State By and Through North Dakota Legislative Assembly, 511 N.W.2d 247, 88 Ed. Law Rep. 1184 (N.D. 1994).

As to intermediate scrutiny, see § 1278.

7 Pa.—Reichley by Wall v. North Penn School Dist., 533 Pa. 519, 626 A.2d 123, 83 Ed. Law Rep. 1030 (1993).

8 Ill.—Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).

N.Y.—Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo, 86 N.Y.2d 279, 631 N.Y.S.2d 551, 655 N.E.2d 647, 103 Ed. Law Rep. 1144 (1995).

Wyo.—Campbell County School Dist. v. State, 907 P.2d 1238, 105 Ed. Law Rep. 771 (Wyo. 1995), as clarified on denial of reh'g, (Dec. 6, 1995).

9 Ark.—Lake View School Dist. No. 25 of Phillips County v. Huckabee, 351 Ark. 31, 91 S.W.3d 472, 173 Ed. Law Rep. 248 (2002), opinion supplemented, 358 Ark. 137, 189 S.W.3d 1, 209 Ed. Law Rep. 537 (2004).

10 Mont.—Helena Elementary School Dist. No. 1 v. State, 236 Mont. 44, 769 P.2d 684, 52 Ed. Law Rep. 342 (1989), opinion amended on other grounds, 236 Mont. 44, 784 P.2d 412, 57 Ed. Law Rep. 1374 (1990).

11 N.C.—Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 120 Ed. Law Rep. 304 (1997).

Charter schools

(1) Alleged disparities in funding schemes between charter schools and district schools did not violate the charter school students' right to equal protection under the state constitution, where students' attendance at the charter school was completely voluntary and optional and they could enroll in district schools at any time, and thus, they were not treated differently from other members of the single class of students to which they belonged, all of whom could have chosen to attend district schools or charter schools, among other options.

Ariz.—Craven v. Huppenthal, 236 Ariz. 217, 338 P.3d 324, 311 Ed. Law Rep. 466 (Ct. App. Div. 1 2014).

(2) Statutes that funded charter schools at 90% of the rate of traditional public schools and prohibited them from receiving state facilities funds did not violate students' equal protection rights; any restriction imposed by the statutes was minor and was justified by the public's need to reduce diversion of scarce resources from traditional public schools.

N.J.—J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 2 A.3d 387, 259 Ed. Law Rep. 709 (App. Div. 2010).

12 W. Va.—State ex rel. Boards of Educ. of the Counties of Upshur, et al. v. Chafin, 180 W. Va. 219, 376 S.E.2d 113, 51 Ed. Law Rep. 637 (1988).

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

13 Minn.—Skeen v. State, 505 N.W.2d 299 (Minn. 1993).

14 Wyo.—Campbell County School Dist. v. State, 907 P.2d 1238, 105 Ed. Law Rep. 771 (Wyo. 1995), as clarified on denial of reh'g, (Dec. 6, 1995).

15 Idaho—Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724, 82 Ed. Law Rep. 660 (1993).

16 Ark.—Magnolia School Dist. No. 14 of Columbia County v. Arkansas State Bd. of Educ., 303 Ark. 666, 799 S.W.2d 791, 64 Ed. Law Rep. 948 (1990).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1472

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1472. School boards and elections

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3613(1), 3613(2), 3623

The courts will uphold statutes and governmental actions relating to school boards and elections that comport with equal protection.

Statutes and governmental actions relating to school boards and elections will be sustained that comport with the requirements of equal protection,[1] including such matters as staggered terms for board members,[2] antinepotism laws,[3] laws preventing board members from having an interest in suppliers' contracts with the school,[4] laws making persons who have been convicted of felonies ineligible to serve on a school board,[5] supermajority voting requirements for certain decisions,[6] a citizenship requirement,[7] a residency requirement for state education board members,[8] a law that allowed mayors of certain sized cities to assume control of failing school districts,[9] and an emergency financial assistance law that gives a financial oversight panel the power to remove school board members[10] or to assume the financial responsibilities of a school district board of education for the duration of a fiscal emergency.[11] In addition, the "one person, one vote" principle of equal protection applies to school board elections.[12]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Courts have invalidated a qualification for voting in school elections that a person be a tenant, property owner, or have paid property taxes,[13] or be a parent or guardian of children in public schools.[14]

An appointive system for the selection of members of a school board does not deny equal protection.[15] However, a selection method based on nominations by a commission composed in violation of equal protection principles, in that qualified voters without children were excluded from the process, also violates equal protection.[16]

CUMULATIVE SUPPLEMENT

Cases:

County's school board districts violated one-person, one-vote guarantee of Equal Protection Clause, where deviation in populations between voting districts was approximately 38% and county did not have legitimate government interest justifying such deviation. U.S. Const. Amend. 14. Nation v. San Juan County, 150 F. Supp. 3d 1253, 331 Ed. Law Rep. 948 (D. Utah 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Pa.—In re La Verdi, 462 Pa. 370, 341 A.2d 125 (1975).

2 Neb.—Barnett v. Boyle, 197 Neb. 677, 250 N.W.2d 635 (1977).

3 U.S.—Grizzle v. Kemp, 634 F.3d 1314, 265 Ed. Law Rep. 895 (11th Cir. 2011).
Ky.—Com. ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 196 Ed. Law Rep. 984 (Ky. 2005).
Me.—Pembroke School Committee v. Veader, 2002 ME 161, 809 A.2d 624, 171 Ed. Law Rep. 864 (Me. 2002).
Okla.—Sharp v. Tulsa County Election Bd., 1994 OK 104, 890 P.2d 836, 98 Ed. Law Rep. 424 (Okla. 1994), as supplemented on reh'g, (Jan. 31, 1995).

4 La.—In re Beychok, 495 So. 2d 1278, 35 Ed. Law Rep. 892 (La. 1986).

5 Ill.—Alvarez v. Williams, 2014 IL App (1st) 133443, 387 Ill. Dec. 852, 23 N.E.3d 544, 313 Ed. Law Rep. 306 (App. Ct. 1st Dist. 2014), appeal pending, (Mar. 1, 2015).

6 N.H.—McGraw v. Exeter Region Co-op. School Dist., 145 N.H. 709, 765 A.2d 710, 150 Ed. Law Rep. 769 (2001).

7 Colo.—Skafte v. Rorex, 191 Colo. 399, 553 P.2d 830 (1976).

8 S.D.—Morrill v. Wollman, 271 N.W.2d 356 (S.D. 1978).

9 Pa.—Harrisburg School Dist. v. Zogby, 574 Pa. 121, 828 A.2d 1079, 179 Ed. Law Rep. 412 (2003).

10 Ill.—East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers, AFL-CIO v. East St. Louis School Dist. No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 227 Ill. Dec. 568, 687 N.E.2d 1050, 123 Ed. Law Rep. 293 (1997).

11 Ohio—E. Liverpool Edn. Assn. v. E. Liverpool City School Dist. Bd. of Edn., 177 Ohio App. 3d 87, 2008-Ohio-3327, 893 N.E.2d 916 (7th Dist. Columbiana County 2008).

12 Pa.—In re Petition to Realign Regional Election Districts in Pennsbury School Dist., 79 A.3d 1218, 299 Ed. Law Rep. 115 (Pa. Commw. Ct. 2013).

13 U.S.—Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969).
N.M.—Prince v. Board of Ed. of Central Consolidated Independent School Dist. No. 22, 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176 (1975).
Bond elections
Idaho—Muench v. Paine, 94 Idaho 12, 480 P.2d 196 (1971).

14 U.S.—Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969).

15 U.S.—Sailors v. Board of Ed. of Kent County, 387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967).

16 Ill.—Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283, 65 Ed. Law Rep. 1181 (1990).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1473

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1473. Staff and faculty

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3618(1) to 3618(5), 3627(1) to 3627(4)

Statutes and governmental actions that afford equal protection to school staff will be upheld by the courts, such as a citizenship requirement for employment as a teacher.

The courts have upheld various statutes and governmental actions relating to the staff and faculty of schools and educational institutions that have complied with the requirements of equal protection, including requiring testing before renewing teachers' licenses,[1] evaluating teacher performance based on test scores of students,[2] specifying the manner of review of a decision to terminate a teacher's contract[3] or a staff member's employment,[4] denying reemployment of school personnel discharged for cause,[5] specifying what personnel retain tenure upon school reorganization,[6] and mandating the retirement of teachers at a specified age.[7] A citizenship requirement for public school teachers need only bear a rational relationship to a legitimate state interest, and thus, a statute denying teaching employment to an alien who, although eligible for citizenship, chooses not to apply for it does not deny equal protection.[8] An attack on a school's residency requirement for teachers requires a showing of clear and intentional discrimination.[9] In the absence of arbitrary or discriminatory treatment of a tenure application, there is no violation of equal protection.[10]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

CUMULATIVE SUPPLEMENT

Cases:

High school math teacher adequately pleaded retaliation claims against school district and his principals under Equal Protection Clause in his § 1983 action based on allegation that he received his first negative performance evaluation in 16 years of teaching two months after he filed charge of discrimination with Equal Employment Opportunity Commission (EEOC). U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983. Vega v. Hempstead Union Free School Dist., 801 F.3d 72 (2d Cir. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Buell v. Hughes, 596 F. Supp. 2d 380, 242 Ed. Law Rep. 140 (D. Conn. 2009).
Mass.—Massachusetts Federation of Teachers, AFT, AFL-CIO v. Board of Educ., 436 Mass. 763, 767 N.E.2d 549, 164 Ed. Law Rep. 393 (2002).

2 U.S.—Cook v. Stewart, 28 F. Supp. 3d 1207, 312 Ed. Law Rep. 135 (N.D. Fla. 2014).

3 Iowa—Matter of Bishop, 346 N.W.2d 500, 16 Ed. Law Rep. 1373 (Iowa 1984).

4 Cal.—Campbell v. Regents of University of California, 35 Cal. 4th 311, 25 Cal. Rptr. 3d 320, 106 P.3d 976, 195 Ed. Law Rep. 989 (2005).
As to equal protection issues relating to public employee union matters, generally, including involving teachers, see §§ 1460 to 1463.

5 Tenn.—Rowe v. Board of Educ. of City of Chattanooga, 938 S.W.2d 351, 116 Ed. Law Rep. 503 (Tenn. 1996).
Refusal to hire for term greater than one year or for tenure track position because of misconduct
Miss.—Suddith v. University of Southern Mississippi, 977 So. 2d 1158, 231 Ed. Law Rep. 471 (Miss. Ct. App. 2007).

6 Ill.—Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283, 65 Ed. Law Rep. 1181 (1990).

7 Ga.—Fulton County School Dist. v. Sanders, 242 Ga. 298, 248 S.E.2d 670 (1978).
Haw.—Nagle v. Board of Ed., 63 Haw. 389, 629 P.2d 109 (1981).
Iowa—DeShon v. Bettendorf Community School Dist., 284 N.W.2d 329 (Iowa 1979).

8 U.S.—Ambach v. Norwick, 441 U.S. 68, 99 S. Ct. 1589, 60 L. Ed. 2d 49 (1979).

9 Ark.—McClelland v. Paris Public Schools, 294 Ark. 292, 742 S.W.2d 907, 44 Ed. Law Rep. 844, 75 A.L.R.4th 263 (1988).
A.L.R. Library
Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

10 Mont.—Akhtar v. Van de Wetering, 197 Mont. 205, 642 P.2d 149, 3 Ed. Law Rep. 167 (1982).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1474

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1474. Difference in treatment of students

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3617(1) to 3617(4), 3626(1), 3626(4) to 3626(6), 3628

Differences in the treatment of students that are rationally related to legitimate state interests do not violate equal protection.

Since public education is not a fundamental right within the concepts relating to equal protection,[1] differences in treatment of students, which in themselves, do not violate specific constitutional guarantees do not violate equal protection if they are rationally related to legitimate state interests.[2] Bona fide residence requirements, which are appropriately defined and uniformly applied with respect to attendance in public schools,[3] and redistricting plans which are rationally related to a legitimate state interest because they save money that would otherwise be needed to cover the cost of buses[4] do not violate equal protection. Academic sanctions for unexcused absences do not violate equal protection even though a waiver provision imported a reasonable element of flexibility into the assessment of a student's total classroom performance.[5]

A requirement that children be immunized against various diseases as a condition of their being admitted to the public schools is not a denial of equal protection.[6] A religious exception to an immunization requirement denies equal protection to those required to be immunized.[7]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Government interests support imposing a grade point average requirement as a condition of eligibility to participate in extracurricular activities, and such a requirement does not violate equal protection.[8] A rule dealing with the athletic eligibility of students transferring from parochial to public schools may be upheld, even though it includes certain exceptions,[9] although such a rule may be invalid if it is not rationally related to its purpose of deterring the recruitment of athletes.[10]

The treatment of students covered by the Individuals with Disabilities Education Act,[11] without providing the same services to nondisabled students, is a narrowly tailored method of rectifying the long history of disparity that existed for disabled students and, thus, does not constitute an equal protection violation.[12]

When a state is able to safely provide reasonable basic educational opportunities and services to a child who has been removed from regular school, there is no compelling state interest to justify a policy of providing the services only if the child's parents are able and willing to reimburse the State for the cost.[13]

CUMULATIVE SUPPLEMENT

Cases:

Town residents could not raise, on behalf of town, an equal protection challenge to private and special law regarding town's ability to withdraw from school district, where town could not do so in its own right. U.S. Const. Amend. 14. MSAD 6 Board of Directors v. Town of Frye Island, 2020 ME 45, 229 A.3d 514 (Me. 2020).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 § 1470.

2 U.S.—Guadalupe Organization, Inc. v. Tempe Elementary School Dist. No. 3., 587 F.2d 1022 (9th Cir. 1978) (disapproved of on other grounds by, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995)).
Punishment of students
To punish students differently is not to classify them in a way that raises equal protection concerns; rather, it is simply exercising the broad discretion that is characteristic of the school administrator-student relationship.
U.S.—Smith ex rel. Smith v. Seligman Unified School Dist. No. 40 of Yavapai County, Ariz., 664 F. Supp. 2d 1070, 252 Ed. Law Rep. 769 (D. Ariz. 2009).

3 U.S.—Martinez v. Bynum, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).

4 U.S.—Doe ex rel. Doe v. Lower Merion School Dist., 665 F.3d 524, 275 Ed. Law Rep. 526 (3d Cir. 2011).

5 Conn.—Campbell v. Board of Educ. of Town of New Milford, 193 Conn. 93, 475 A.2d 289, 17 Ed. Law Rep. 840 (1984).
Differing guidelines in determining an unexcused absence
Statute providing for mandatory education of children did not violate equal protection by permitting local school boards to establish differing guidelines with respect to what constituted an "unexcused" absence from school; the statute was reasonably related to the legitimate governmental interest of ensuring that the children residing in the state were afforded the opportunity of an education, and differences in the circumstances and resources of local school boards and the residents of each school district required that the varying school districts be allowed some flexibility in determining what constituted an unexcused absence from school so as to trigger possible application of statutory sanctions.
Ga.—Pitts v. State, 293 Ga. 511, 748 S.E.2d 426, 297 Ed. Law Rep. 565 (2013).

6 U.S.—Workman v. Mingo County Schools, 667 F. Supp. 2d 679, 253 Ed. Law Rep. 242 (S.D. W. Va. 2009).

Neb.—Maack v. School Dist. of Lincoln, 241 Neb. 847, 491 N.W.2d 341, 78 Ed. Law Rep. 1038 (1992).
N.J.—Sadlock v. Board of Ed. of Borough of Carlstadt in Bergen County, 137 N.J.L. 85, 58 A.2d 218 (N.J. Sup. Ct. 1948).
Tex.—Itz v. Penick, 493 S.W.2d 506 (Tex. 1973).

7 Miss.—Brown v. Stone, 378 So. 2d 218 (Miss. 1979).

8 Mont.—State, ex rel., Bartmess v. Board of Trustees of School Dist. No. 1, 223 Mont. 269, 726 P.2d 801, 35 Ed. Law Rep. 564 (1986).
W. Va.—Bailey v. Truby, 174 W. Va. 8, 321 S.E.2d 302, 20 Ed. Law Rep. 980 (1984).

Even though honors and special education classes treated differently

Tex.—Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 27 Ed. Law Rep. 605 (Tex. 1985).

9 Or.—Cooper v. Oregon School Activities Ass'n, 52 Or. App. 425, 629 P.2d 386, 15 A.L.R.4th 869 (1981).

Eligibility upon transferring from one public school to another

U.S.—McGee v. Virginia High School League, Inc., 801 F. Supp. 2d 526, 274 Ed. Law Rep. 504 (W.D. Va. 2011).

10 Tex.—Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981).

A.L.R. Library

Validity of regulation of athletic eligibility of students voluntarily transferring from one school to another, 15 A.L.R.4th 885.

11 20 U.S.C.A. §§ 1400 et seq., generally discussed in C.J.S., Schools and School Districts §§ 965 to 986.

12 Wyo.—In re RM, 2004 WY 162, 102 P.3d 868, 194 Ed. Law Rep. 426 (Wyo. 2004).

13 W. Va.—Cathe A. v. Doddridge County Bd. of Educ., 200 W. Va. 521, 490 S.E.2d 340, 120 Ed. Law Rep. 1212 (1997).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1475

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

G. Schools and Education

§ 1475. Difference in treatment of students—Tuition, aid, and transportation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3614, 3624, 3626(2), 3626(3)

Statutes and governmental actions relating to student tuition, aid, and transportation will be upheld if they are reasonably related to a legitimate state interest unless the compelling state interest test is applicable.

The courts have considered the validity of various statutes and other governmental actions relating to school tuition and funding under the equal protection guarantee and have upheld those that have a rational relationship to a legitimate state interest.[1]

A statute that withholds state funds for the education of children who were not legally admitted into the United States, and which authorizes school districts to deny them enrollment, violates equal protection, since there is no national policy that might justify a state in denying the children an elementary education, and the undocumented status of the children does not establish a sufficient rational basis for denying the benefits that the State affords to other residents.[2] It is a denial of equal protection to condition the receipt of public financial assistance at college on citizenship.[3]

A regulation used to determine whether a student is a resident for fee purposes at state universities bears a rational relationship, for equal protection purposes, to a state's legitimate interest in protecting and preserving the quality of its universities and the right of bona fide residents to attend on a preferential tuition basis.[4] A durational residency requirement for qualification

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

for lower tuition given resident students is within the equal protection guarantee if it does not give rise to an irrebuttable presumption.[5] However, a criterion based on a student's dependence on an out-of-state benefactor arbitrarily and irrationally discriminates against bona fide residents.[6]

A school bus policy may be upheld even though it makes distinctions based on geography[7] or age;[8] allows only certain districts to charge a fee;[9] provides for charging a fee, which may be waived for indigency;[10] or operates differently with regard to private school students.[11] However, a refusal to provide service to certain handicapped students, who could not walk to the nearest bus stop, and who lived on a dirt road that could not be safely traversed by a large school bus, deprives those children of equal protection.[12]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Mo.—Committee for Educational Equality v. State, 294 S.W.3d 477, 249 Ed. Law Rep. 926 (Mo. 2009).
N.J.—Levine v. State Dept. of Institutions and Agencies, 84 N.J. 234, 418 A.2d 229 (1980).
N.Y.—Matter of Levy, 38 N.Y.2d 653, 382 N.Y.S.2d 13, 345 N.E.2d 556 (1976).
Vouchers only for students in grades in which education constitutionally mandated
Ga.—Lowe v. State, 267 Ga. 754, 482 S.E.2d 344, 116 Ed. Law Rep. 826 (1997).
Limiting tuition grants to students of nonprofit colleges
S.C.—Talley v. South Carolina Higher Educ. Tuition Grants Committee, 289 S.C. 483, 347 S.E.2d 99, 34 Ed. Law Rep. 930 (1986).

2 U.S.—Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).

3 U.S.—Nyquist v. Mauclet, 432 U.S. 1, 97 S. Ct. 2120, 53 L. Ed. 2d 63 (1977).

4 Kan.—Peck v. University Residence Committee of Kansas State University, 248 Kan. 450, 807 P.2d 652, 66 Ed. Law Rep. 816 (1991).

5 Neb.—Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).
Or.—Melvin v. State Bd. of Higher Educ., 17 Or. App. 216, 521 P.2d 35 (1974).
Conclusive presumption violates equal protection
Colo.—Covell v. Douglas, 179 Colo. 443, 501 P.2d 1047 (1972).

6 Md.—Frankel v. Board of Regents of University of Maryland System, 361 Md. 298, 761 A.2d 324, 148 Ed. Law Rep. 966 (2000).

7 Mass.—Fedele v. School Committee of Westwood, 412 Mass. 110, 587 N.E.2d 757, 72 Ed. Law Rep. 1027 (1992).
N.J.—West Morris Regional Bd. of Ed. v. Sills, 58 N.J. 464, 279 A.2d 609 (1971).
Denial of transportation to students who transfer to school outside of their district
A statute that allegedly distinguished between students based on geography in allowing students to transfer to nonfailing schools from their failing schools, but required transferring families to provide their own transportation to nonpublic schools and public schools in other schools systems and permitted schools to develop terms and conditions for the receipt of transferring students, was rationally related to state interests of educational flexibility and resource management, and therefore, satisfied equal protection; the statute allowed students to transfer out of failing schools, resources for education were scarce, and the legislature did not want to burden nonfailing schools with the expense of transporting students from outside their systems.
U.S.—C.M. ex rel. Marshall v. Bentley, 13 F. Supp. 3d 1188, 309 Ed. Law Rep. 1053 (M.D. Ala. 2014).

8 U.S.—Menbeck v. Katonah-Lewisboro School Dist., 403 F. Supp. 2d 281, 205 Ed. Law Rep. 620 (S.D. N.Y. 2005).

9 U.S.—Kadrmas v. Dickinson Public Schools, 487 U.S. 450, 108 S. Ct. 2481, 101 L. Ed. 2d 399, 47 Ed. Law Rep. 383 (1988).

10 Cal.—Arcadia Unified School Dist. v. State Dept. of Education, 2 Cal. 4th 251, 5 Cal. Rptr. 2d 545, 825 P.2d 438, 72 Ed. Law Rep. 1137 (1992).

11 W. Va.—Janasiewicz v. Board of Educ. of Kanawha County, 171 W. Va. 423, 299 S.E.2d 34, 8 Ed. Law Rep. 864 (1982).

12 W. Va.—Kennedy v. Board of Educ., McDowell County, 175 W. Va. 668, 337 S.E.2d 905, 29 Ed. Law Rep. 821 (1985).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law VI XVII H Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3540, 3541, 3547 to 3553

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
A.L.R. Index, Poor Persons
A.L.R. Index, Unemployment Compensation

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1476

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

§ 1476. Classification with reasonable basis not a denial of equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3540

A classification in welfare legislation is consistent with equal protection if it is rationally based and free from invidious discrimination.

A classification in social welfare legislation is consistent with equal protection if it is rationally based and free from invidious discrimination.[1] A classification that has some reasonable basis does not deny equal protection simply because it is not made with mathematical nicety or does result in some inequality.[2]

Since alienage is a suspect class, strict judicial scrutiny is invoked in analyzing classifications in social welfare legislation relating to aliens, and classifications that deny equal protection in denying welfare benefits to aliens or to aliens who have not resided in the United States for a specified number of years will not be upheld.[3]

The exclusion of households containing unrelated persons from participation in the food stamp program violates equal protection.[4] However, a budget act precluding households from becoming eligible for food stamps if a member of household is on strike and precluding an increase in an allotment of food stamps the household was receiving because the income of striking member had decreased was rational for purposes of equal protection analysis, since the food stamp program generally operates

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

in that manner, with the entire household suffering whenever any individual takes any action that hampers the ability to meet eligibility requirements.[5]

Equal protection does not require that a state grant the same benefits to needy persons under state programs than they would have received had they been eligible for federal programs.[6]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Weinberger v. Salfi, 422 U.S. 749, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975); Hagans v. Lavine, 415 U.S. 528, 94 S. Ct. 1372, 39 L. Ed. 2d 577 (1974); Jefferson v. Hackney, 406 U.S. 535, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972).

Amount of lien against motor vehicle not subtracted from value for purposes of determining assets and eligibility for assistance

Minn.—State v. Basal, 763 N.W.2d 328 (Minn. Ct. App. 2009).

As to the validity of the old age, survivors, and disability insurance provisions of the Social Security Act, see C.J.S., Social Security and Public Welfare § 69.

2 U.S.—Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976); Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970).

Mass.—Tarin v. Commissioner of the Div. of Medical Assistance, 424 Mass. 743, 678 N.E.2d 146 (1997).

Pa.—McCusker v. W.C.A.B. (Rushton Min. Co.), 536 Pa. 380, 639 A.2d 776 (1994).

3 U.S.—Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

Conn.—Barannikova v. Town of Greenwich, 229 Conn. 664, 643 A.2d 251 (1994).

Mich.—El Souri v. Department of Social Services, 429 Mich. 203, 414 N.W.2d 679 (1987).

4 U.S.—U. S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973).

5 U.S.—Lyng v. International Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW, 485 U.S. 360, 108 S. Ct. 1184, 99 L. Ed. 2d 380 (1988).

6 Kan.—Bullock v. Whiteman, 254 Kan. 177, 865 P.2d 197 (1993).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1477

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

§ 1477. Medical assistance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3548 to 3552

Statutes relating to medical assistance, including Medicaid, are subject to equal protection requirements and are generally examined by the courts under the rational basis test.

Medical assistance statutes of a state, including those relating to Medicaid, are subject to the strictures of equal protection,[1] and the rational basis test is the proper method of dealing with challenges to a medical assistance program.[2]

The denial of coverage under Medicaid of the services of chiropractors and physical therapists has been upheld.[3] Providers are also not denied equal protection by regulations adjusting reimbursement rates, given the wide latitude granted states by the federal statute to establish procedures for reimbursing health care providers.[4]

Durational residency requirements for medical assistance, such as for free nonemergency medical care, violate equal protection, applying the compelling interest test, when the right to travel is implicated.[5] However, a distinction was drawn in a case involving a shorter residency period, where care was not denied and the patient's right to travel was not impaired, but the health care provider was denied payment on the basis of a statute imposing a residence requirement.[6]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Federal or state statutes that limit the use of public funding, including federal Medicaid funds, to therapeutic abortions do not violate equal protection.[7] The Equal Protection Clause does not require a state to pay Medicaid expenses for abortions for indigent women simply because it pays expenses for childbirth,[8] and a policy decision of a county or municipality not to provide publicly financed hospital services for nontherapeutic abortions, while providing them for childbirth, has been upheld.[9] However, a regulation denying Medicaid funding for medically necessary abortions, except for pregnant women at risk of dying or pregnant from rape or incest, failed an equal protection analysis under a state constitution where the State grants needed health care to some Medicaid-eligible residents but denies it to others, based on criteria entirely unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons in the state.[10] State legislation that categorically prohibits a department of health and human services from providing state or federal funds to a family planning organization and its affiliated organizations may be held as not being rationally related to the State's interest in favoring childbirth over abortion and thus violate the Equal Protection Clause.[11]

An act providing pharmaceutical assistance to the aged and disabled, but denying benefits to the disabled under age 65 who do not receive Social Security disability benefits, does not violate equal protection since this exclusion rationally furthered a legislature's goal of minimizing the program's costs while maximizing its benefits.[12]

The treatment of child support as available income for determining eligibility for medical assistance does not violate equal protection by differentiating between divorced Medicaid recipients and those who are married.[13]

CUMULATIVE SUPPLEMENT

Cases:

Statutory rate of reimbursement to private ambulance companies for providing emergency medical transportation for Medicaid patients that was lower than rate given to public providers of emergency medical transportation did not violate companies' equal protection rights; favoring public over private providers because payments to public providers counted toward State's share of Medicaid dollars, whereas payments to private providers did not, was reasonable justification. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 14019.3(c), 14019.3(g), 14105.94, 14132(i); Cal. Code Regs. tit. 22, § 51527. Sierra Medical Services Alliance v. Kent, 883 F.3d 1216 (9th Cir. 2018).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Doe v. Colautti, 454 F. Supp. 621 (E.D. Pa. 1978), order aff'd, 592 F.2d 704 (3d Cir. 1979).
Obligation under state constitution
When state government seeks to act "for the common benefit, protection and security of the people" under a state constitution in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe the constitutional rights of citizens.
W. Va.—Women's Health Center of West Virginia, Inc. v. Panepinto, 191 W. Va. 436, 446 S.E.2d 658 (1993).

2 Cal.—California Chiropractic Assn. v. Human Relations Agency, 91 Cal. App. 3d 141, 154 Cal. Rptr. 255, 8 A.L.R.4th 1043 (3d Dist. 1979).
Reduction of pay for personal care attendants caring for relatives
An amendment to a medical assistance statute drew an arbitrary distinction by reducing the pay of personal care attendants (PCAs) who were related to recipients to 80% of the pay of nonrelative PCAs, thereby failing the rational-basis test for an equal protection challenge under the state constitution; the distinction

was based purely on assumptions, rather than evidence, that relative PCAs would continue to provide care out of a moral obligation even if their pay was cut and that nonrelative caregivers did not have the same moral obligation and incentive to continue providing care.

Minn.—Healthstar Home Health, Inc. v. Jesson, 827 N.W.2d 444 (Minn. Ct. App. 2012).

3 N.M.—Katz v. New Mexico Dept. of Human Services, Income Support Division, 1981-NMSC-012, 95 N.M. 530, 624 P.2d 39 (1981).

4 Ohio—Ohio Academy of Nursing Homes, Inc. v. Barry, 56 Ohio St. 3d 120, 564 N.E.2d 686 (1990).

S.C.—Anco, Inc. v. State Health and Human Services Finance Com'n, 300 S.C. 432, 388 S.E.2d 780 (1989).

5 U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974).

A.L.R. Library

Validity, Construction, and Application of State Statutes Limiting or Barring Public Health Care to Indigent Aliens, 113 A.L.R.5th 95.

6 Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

7 U.S.—Williams v. Zbaraz, 448 U.S. 358, 100 S. Ct. 2694, 65 L. Ed. 2d 831 (1980); Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980).

Result of rape or incest, or endangers woman

Prohibition on funding for abortions unless pregnancy results from rape or incest, or places woman in danger of death, does not violate the equal protection clause of a state constitution since restrictions are rationally related to a legislative purpose of providing indigent health care only to an extent that federal matching funds are available.

Tex.—Bell v. Low Income Women of Texas, 95 S.W.3d 253 (Tex. 2002).

Necessary to save mother's life

Mich.—Doe v. Department of Social Services, 439 Mich. 650, 487 N.W.2d 166 (1992).

Pa.—Fischer v. Department of Public Welfare, 509 Pa. 293, 502 A.2d 114 (1985).

A.L.R. Library

Validity Of State Statutes And Regulations Limiting or Restricting Public Funding for Abortions Sought By Indigent Women, 118 A.L.R.5th 463.

Validity of Restrictions on Abortion Funding Under Military Health Care Programs, 38 A.L.R. Fed. 2d 1.

8 U.S.—Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 53 L. Ed. 2d 484 (1977).

Mich.—Doe v. Department of Social Services, 439 Mich. 650, 487 N.W.2d 166 (1992).

N.C.—Rosie J. v. North Carolina Dept. of Human Resources, 347 N.C. 247, 491 S.E.2d 535 (1997).

9 U.S.—Poelker v. Doe, 432 U.S. 519, 97 S. Ct. 2391, 53 L. Ed. 2d 528 (1977).

§ 1583.

10 Alaska—State, Dept. of Health & Social Services v. Planned Parenthood of Alaska, Inc., 28 P.3d 904 (Alaska 2001).

11 U.S.—Planned Parenthood of Cent. North Carolina v. Cansler, 877 F. Supp. 2d 310 (M.D. N.C. 2012).

12 N.J.—Barone v. Department of Human Services, Div. of Medical Assistance and Health Services, 107 N.J. 355, 526 A.2d 1055 (1987).

13 Mass.—Tarin v. Commissioner of the Div. of Medical Assistance, 424 Mass. 743, 678 N.E.2d 146 (1997).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1478

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

§ 1478. Family assistance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3541

Provisions in temporary family assistance statutes concerning residence requirements and family caps have been upheld in the face of equal protection challenges.

Challenges to a state's Temporary Assistance to Needy Families program with regard to residence requirements that must be met by alien recipients are subject to rational basis review, for the purpose of equal protection analysis, on the basis that the general rule that state laws that discriminate against legal immigrants in the distribution of economic benefits are subject to strict scrutiny[1] does not apply to state laws that merely adopt uniform federal guidelines regarding aliens' eligibility for benefits; furthermore, similar requirements under a state supplemental program for persons who were no longer eligible to receive transitional assistance had a rational basis, since they were consistent with national policies regarding alienage and placed no additional burden on aliens, and the residency requirement encouraged aliens to develop enduring ties to the state.[2] Courts have also upheld, in the face of equal protection challenges, family cap provisions, denying additional benefits if a child is born after the family starts receiving benefits,[3] and a state's policy of applying different criteria to the determination of physical custody, depending on whether one or both parents applied for temporary assistance benefits.[4]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Equal protection is not violated by statutes and regulations setting maximum rates and contract requirements for the placement of children in need of assistance where they apply to both in-state and out-of-state placements.[5] Nor is it violated by a state child care program's electronic finger scanning requirement for recipients of child care assistance in order to track attendance and make payments to child care providers based on information entered into the system since the State had a duty to ensure the integrity of funds and the accuracy of information for the appropriate disbursement of funds.[6]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 § 1476.

2 Mass.—Doe v. Commissioner of Transitional Assistance, 437 Mass. 521, 773 N.E.2d 404 (2002).

3 N.J.—Sojourner A. v. New Jersey Dept. of Human Services, 177 N.J. 318, 828 A.2d 306 (2003).

4 Alaska—Lauth v. State, 12 P.3d 181 (Alaska 2000).

5 Iowa—In Interest of C.S., 516 N.W.2d 851 (Iowa 1994).

6 U.S.—Williams v. Berry, 977 F. Supp. 2d 621 (S.D. Miss. 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1479

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

§ 1479. Unemployment compensation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3553

Coverage under unemployment compensation acts conforms to equal protection requirements if exclusions are justified under the rational basis test.

Equal protection questions under an unemployment compensation act are determined by utilizing the rational basis test.[1] Unemployment compensation laws are not so arbitrary or unreasonable as to deny equal protection even though they exclude employers of less than a prescribed number of employees.[2] Thus, an unemployment compensation act may, without violating the Equal Protection Clause, exempt particular classes of employers, such as employers of agricultural laborers, domestic help, seamen, insurance agents, or close relatives.[3] It is also within the equal protection guarantee to exclude charitable institutions, interstate railways, and state and federal governments.[4] Equal protection is not violated by statutes excluding persons performing duties of a religious nature at a place of worship from unemployment insurance coverage.[5] A statute does not deny equal protection by excluding service performed in a school by a student who is regularly attending classes.[6] On the other hand, a statute defining persons distributing certain goods as "covered employees" for unemployment compensation purposes violates equal protection, where those persons are independent contractors, and no rationale is given for categorizing them differently than independent contractors who distribute other products.[7]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Employers may be classified according to the rates of tax that they pay,[8] and for the purpose of contribution rates, employers may be classified according to their experience rating.[9] Determining coverage by wages paid, rather than wages earned, during the applicable period does not violate equal protection.[10]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Colo.—Industrial Com'n of State of Colo. v. Board of County Com'rs of Adams County, 690 P.2d 839, 21 Ed. Law Rep. 703 (Colo. 1984).

2 U.S.—Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

3 U.S.—Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

4 U.S.—Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 57 S. Ct. 868, 81 L. Ed. 1245, 109 A.L.R. 1327 (1937).

5 N.Y.—Claim of Klein, 78 N.Y.2d 662, 578 N.Y.S.2d 498, 585 N.E.2d 809, 72 Ed. Law Rep. 306 (1991).

6 Colo.—Hyde v. Industrial Commission, 195 Colo. 67, 576 P.2d 541 (1978).

7 Idaho—Bon Appetit Gourmet Foods, Inc. v. State, Dept. of Employment, 117 Idaho 1002, 793 P.2d 675 (1989).

8 Kan.—Wesley Medical Center v. McCain, 226 Kan. 263, 597 P.2d 1088 (1979).

9 Idaho—Boise Cascade Corp. v. Department of Employment, 94 Idaho 721, 496 P.2d 958 (1972).
Ill.—Conlon Bros. Mfg. Co. v. Annunzio, 409 Ill. 277, 99 N.E.2d 119 (1951).
Minn.—General Mills v. Division of Employment and Sec. for Minn., 224 Minn. 306, 28 N.W.2d 847 (1947).
S.C.—Pickelsimer v. Pratt, 198 S.C. 225, 17 S.E.2d 524 (1941).
Even if employer was not claimant's last one
D.C.—Hamel & Park v. District of Columbia Dept. of Employment Services, 487 A.2d 603 (D.C. 1985).

10 Mass.—Naples v. Commissioner of Dept. of Employment and Training, 412 Mass. 631, 591 N.E.2d 203 (1992).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1480

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

H. Social Welfare Legislation

§ 1480. Unemployment compensation—Benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3547, 3553

Statutory classifications relating to unemployment compensation benefits may be upheld after applying a rational relationship test.

Equal protection does not mandate an unemployment compensation scheme that produces an exact equality of benefits[1] and is not violated if the applicable statutes and regulations treat all claimants alike and are not arbitrary or capricious.[2] A classification relating to unemployment benefits that is not inherently suspect will be upheld if it bears some rational relation or reasonable basis to a legitimate state purpose.[3]

Claimants are not denied equal protection by unemployment compensation laws restricting benefits to those able and willing to accept full-time work as this requirement advances the legitimate government interests of conserving available funds for the benefit of those who need them most and limiting unemployment compensation to the briefest possible period.[4] Statutes granting unemployment benefits to night students, but denying those benefits to otherwise eligible persons who attend school during the day, do not deny equal protection, since it is rational for a legislature to conclude that attending school during the daytime imposes a greater restriction upon obtaining full-time employment than does attending school at night.[5] The disqualification of full-time college students from receiving unemployment benefits does not violate equal protection.[6] Similarly, a provision

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

denying unemployment benefits for applicants participating in academic education, but not vocational training, is rationally related to a legislative objective.[7]

Disqualification from benefits where unemployment is due to a labor dispute is valid.[8] Benefits may properly be denied when unemployment is due to a lockout at the place of employment, although benefits are provided to workers who are unemployed due to a lockout in a functionally integrated establishment,[9] or where unemployment is due to a labor dispute at another of the employer's operations.[10] However, in one instance, an unfair labor practice statute under which nurses were afforded unemployment compensation benefits during their strike served a legitimate interest in seeking to prevent employers from engaging in unfair labor practices by providing striking employees with benefits, without which employees would have had to choose between allowing the unfair labor practice to continue in order to be paid and striking to end the practice without any compensation; and thus, the statute did not violate the employer health care provider's equal protection rights under federal or state constitution.[11]

It is not a violation of equal protection to deny benefits to a person leaving work because of marital circumstances[12] or to a person who terminates employment to leave the locale to live with a spouse.[13] However, a blanket disqualification of persons voluntarily leaving employment for domestic reasons is a violation of equal protection, where many other reasons for voluntarily quitting work are afforded the benefit of a good cause analysis,[14] as is harsher treatment, with regard to the period of disqualification, of employees who leave work for family reasons as compared to others who leave their employment voluntarily.[15]

The denial of unemployment benefits by reason of the receipt of pension, retirement, or annuity payments to which an employer has contributed is consistent with equal protection[16] even though old age and survivors benefits do not result in those consequences.[17] Allowing benefits to a nonunion employee forced to retire under a company pension program, while not allowing benefits to an employee retired or discharged under a collective bargaining agreement, is valid because the nonunion employee was forced to leave work without any prior bargaining.[18] A statute specifying those employees who may seek unemployment compensation after receiving workers' compensation benefits also did not violate equal protection.[19]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 N.H.—Appeal of Bosselait, 130 N.H. 604, 547 A.2d 682 (1988).

2 Utah—Noe v. Board of Review, Indus. Com'n of Utah, Dept. of Employment Sec., 725 P.2d 1344 (Utah 1986).

3 U.S.—Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327, 54 L. Ed. 2d 324 (1977).
D.C.—Konecny v. District of Columbia Dept. of Employment Services, 447 A.2d 31 (D.C. 1982).
La.—Estelle v. Eysinki, 147 So. 3d 1136 (La. Ct. App. 4th Cir. 2014), writ denied, 152 So. 3d 885 (La. 2014).
N.D.—Lee v. Job Service North Dakota, 440 N.W.2d 518, 53 Ed. Law Rep. 1283 (N.D. 1989).
Pa.—Devine v. Unemployment Compensation Bd. of Review, 101 A.3d 1235 (Pa. Commw. Ct. 2014).
W. Va.—Thomas v. Rutledge, 167 W. Va. 487, 280 S.E.2d 123 (1981).
Wis.—Jenks v. Wisconsin Dept. of Industry, Labor and Human Relations, 107 Wis. 2d 714, 321 N.W.2d 347 (Ct. App. 1982).

4 N.H.—Appeal of Bosselait, 130 N.H. 604, 547 A.2d 682 (1988).

5 U.S.—Idaho Dept. of Employment v. Smith, 434 U.S. 100, 98 S. Ct. 327, 54 L. Ed. 2d 324 (1977).
Utah—Norton v. Department of Employment Sec., 22 Utah 2d 24, 447 P.2d 907 (1968).

6 N.D.—Lee v. Job Service North Dakota, 440 N.W.2d 518, 53 Ed. Law Rep. 1283 (N.D. 1989).

7 Alaska—Sonneman v. Knight, 790 P.2d 702, 60 Ed. Law Rep. 209, 47 A.L.R.5th 965 (Alaska 1990).

8 Mich.—Lawrence Baking Co. v. Michigan Unemployment Compensation Commission, 308 Mich. 198, 13 N.W.2d 260, 154 A.L.R. 660 (1944).
N.Y.—Drassenower v. Levine, 48 A.D.2d 957, 369 N.Y.S.2d 227 (3d Dep't 1975).

9 Mich.—Smith v. Michigan Employment Sec. Commission, 410 Mich. 231, 301 N.W.2d 285 (1981).

10 Ohio—Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S. Ct. 1898, 52 L. Ed. 2d 513 (1977).

11 Mo.—St. John's Mercy Health System v. Division of Employment Sec., 273 S.W.3d 510 (Mo. 2009).

12 Ill.—Illinois Bell Telephone Co. v. Board of Review of Dept. of Labor, 413 Ill. 37, 107 N.E.2d 832 (1952).
Wash.—Davis v. Employment Sec. Dept., 108 Wash. 2d 272, 737 P.2d 1262 (1987).

13 D.C.—Schroeder v. District of Columbia Dept. of Employment Services, 479 A.2d 1281 (D.C. 1984).
Idaho—Carlson v. Center of Resources for Independent People, 109 Idaho 1053, 712 P.2d 1161 (1984).
Utah—Chandler v. Department of Employment Sec., 678 P.2d 315 (Utah 1984).

14 Pa.—Wallace v. Com., Unemployment Compensation Bd. of Review, 38 Pa. Commw. 342, 393 A.2d 43 (1978).

15 Colo.—Kistler v. Industrial Commission, 192 Colo. 172, 556 P.2d 895 (1976).
W. Va.—Thomas v. Rutledge, 167 W. Va. 487, 280 S.E.2d 123 (1981).

16 D.C.—Rogers v. District Unemployment Compensation Bd., 290 A.2d 586 (D.C. 1972).
Utah—Coleman v. Department of Employment Sec. Bd. of Review of Indus. Commission of Utah, 29 Utah 2d 326, 509 P.2d 355 (1973).

Reduction of benefits when receiving pension

N.Y.—In re Schiavo, 107 A.D.3d 1293, 967 N.Y.S.2d 778 (3d Dep't 2013), leave to appeal denied, 22 N.Y.3d 854, 977 N.Y.S.2d 183, 999 N.E.2d 548 (2013).

17 Ind.—Fields v. Review Bd. of Indiana Employment Sec. Division, 179 Ind. App. 381, 385 N.E.2d 1168 (1979).
Wash.—Caughey v. Employment Sec. Dept., 81 Wash. 2d 597, 503 P.2d 460, 56 A.L.R.3d 513 (1972).

18 Ohio—Salzl v. Gibson Greeting Cards, Inc., 61 Ohio St. 2d 35, 15 Ohio Op. 3d 49, 399 N.E.2d 76 (1980).

19 Conn.—Molnar v. Administrator, Unemployment Compensation Act, 239 Conn. 233, 685 A.2d 1107 (1996).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law VI XVII I Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3683, 3684(1) to 3684(3), 3686, 3689, 3695, 3694, 3697, 3698, 3700 to 3706

A.L.R. Library

A.L.R. Index, Business and Commerce
A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
A.L.R. Index, Professional Persons

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1481

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1481. Rational basis scrutiny

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3682

While equal protection applies to the right to engage in a legitimate business or occupation, economic regulations are generally subject to only limited scrutiny.

Equal protection applies to the right of all persons to engage in a legitimate business or occupation.[1] The right to engage in a particular occupation or business, guaranteed by the Equal Protection Clause, is an important, but not fundamental, constitutional right subject to the rational basis test;[2] that is, a state may not deprive an individual of that right unless it can be shown that such deprivation is reasonably related to the state interest that is sought to be protected.[3] Economic legislation that does not employ suspect classifications or burden fundamental rights is subject to only minimum equal protection scrutiny,[4] and the U.S. Supreme Court will not invalidate a wholly economic regulation solely on equal protection grounds.[5]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Bright v. Gallia County, Ohio, 753 F.3d 639 (6th Cir. 2014), cert. denied, 135 S. Ct. 1561 (2015).
Cal.—Sei Fujii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952).

Md.—Massage Parlors, Inc. v. Mayor and City Council of Baltimore, 284 Md. 490, 398 A.2d 52 (1979).
Or.—Kenji Namba v. McCourt, 185 Or. 579, 204 P.2d 569 (1949).

2 U.S.—Locke v. Shore, 634 F.3d 1185 (11th Cir. 2011).
Cal.—Sulla v. Board of Registered Nursing, 205 Cal. App. 4th 1195, 140 Cal. Rptr. 3d 514 (1st Dist. 2012).
Mass.—Roche v. Director of Div. of Marine Fisheries, 76 Mass. App. Ct. 733, 926 N.E.2d 559 (2010).
Pa.—Stanton-Negley Drug Co. v. Department of Public Welfare, 943 A.2d 377 (Pa. Commw. Ct. 2008).

3 Pa.—Stanton-Negley Drug Co. v. Department of Public Welfare, 943 A.2d 377 (Pa. Commw. Ct. 2008).

4 Wash.—Foley v. Department of Fisheries, 119 Wash. 2d 783, 837 P.2d 14 (1992).

5 U.S.—City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976).

Higher scrutiny under state constitution

Although economic and commercial interests traditionally warrant minimal scrutiny under equal protection analysis, Alaska's approach is more protective of individual rights than that employed by federal courts, in that means chosen must bear "fair and substantial" relation to attainment of legitimate government objective.
Alaska—Pan-Alaska Const., Inc. v. State Dept. of Admin., Div. of General Services, 892 P.2d 159 (Alaska 1995).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1482

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1482. Classification of businesses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3680 to 3682

A legislature may, without denying equal protection, classify businesses for purposes of regulation and provide different rules for different classes of businesses and professions.

In the exercise of its police power[1] and in the interest and for the protection of the public, a state may, without denying equal protection, reasonably regulate a business affected with a public interest,[2] or a useful trade, occupation, or profession, if improper practice of it may prove injurious to the public.[3] For a statute regulating the conduct of business to satisfy the constitutional requirement of equal protection, it must serve some need relating to the public health, safety, convenience, and welfare in a reasonable and impartial way.[4] Within these proper limitations, a legislature may, without denying equal protection, classify businesses for purposes of regulation,[5] provide different rules for different classes of businesses and professions,[6] limit a regulation to a particular kind of business,[7] classify corporations for the purpose of regulation where the regulation directly relates to the inherent differences among the corporations,[8] extend to some persons privileges denied to others,[9] or impose restrictions on some but not on others[10] where the classification is based on real differences in the subject matter[11] and is reasonable,[12] and the legislation affects alike all persons pursuing the same business under the same conditions.[13] Differences in types of business conducted may be sufficient to sustain legislation challenged on equal protection grounds, if those differences

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

cause the businesses not to be similarly situated,[14] and the Equal Protection Clause does not require that different professions be treated in the same manner.[15] Accordingly, a regulation may be constitutionally confined to a particular trade.[16]

A legislature has a large measure of discretion in making classifications with regard to the regulation of businesses and professions,[17] and a court will give deference to legislative determinations when a state's exercise of the police power in an area of economic regulation is challenged on equal protection grounds.[18] Thus, a legislature may exclude some organizations from a regulatory measure if it has reason to believe that those entities are already appropriately regulated under other legislation.[19] Also, legislation is not invalidated on equal protection grounds simply because it does not go as far as it might have in protecting consumers[20] or reforming the practices of all organizations.[21]

Regulatory classifications are generally reviewed under the rational relation test rather than the compelling governmental interest equal protection standard[22] although a few states apply an important or compelling state interest test.[23] Under the predominant view, regulatory classifications need only bear a rational relationship to a legitimate governmental objective[24] in a manner that is neither arbitrary nor discriminatory.[25] Legislation may not be discriminatory in the sense of applying unequally to persons pursuing or engaged in the same profession or business under the same or similar circumstances.[26] Thus, the Equal Protection Clause of the Fourteenth Amendment prohibits states from favoring their own residents by erecting barriers to foreign companies that wish to do interstate business.[27]

A person may not be excluded from a profession or occupation in a manner or for reasons that contravene the Equal Protection Clause.[28]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 §§ 699 to 720.

2 U.S.—Williams v. State of Ark., 217 U.S. 79, 30 S. Ct. 493, 54 L. Ed. 673 (1910).
Md.—Massage Parlors, Inc. v. Mayor and City Council of Baltimore, 284 Md. 490, 398 A.2d 52 (1979).

3 Ind.—Ice v. State ex rel. Indiana State Bd. of Dental Examiners, 240 Ind. 82, 161 N.E.2d 171 (1959).

4 Conn.—C & H Enterprises, Inc. v. Commissioner of Motor Vehicles, 167 Conn. 304, 355 A.2d 247 (1974).
Betting messenger service
Statute prohibiting messenger-type services for transmission or delivery of racetrack wagers was reasonably related to legitimate state interests in protecting public safety and welfare and did not deny equal protection.
Neb.—Midwest Messenger Ass'n v. Spire, 223 Neb. 748, 393 N.W.2d 438, 78 A.L.R.4th 469 (1986).

5 Cal.—O. G. Sansone Co. v. Department of Transportation, 55 Cal. App. 3d 434, 127 Cal. Rptr. 799 (2d Dist. 1976).
S.C.—Henderson v. McMaster, 104 S.C. 268, 88 S.E. 645 (1916).
Tenn.—Lamb v. Whitaker, 171 Tenn. 485, 105 S.W.2d 105 (1937).
Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

6 U.S.—Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Or.—Donohue v. Rosenthal, 147 Or. 408, 34 P.2d 316 (1934).
S.C.—Henderson v. McMaster, 104 S.C. 268, 88 S.E. 645 (1916).
Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).
Different penalties for professionals who shirk tax responsibilities
The State possessed a legitimate governmental interest, sufficient to satisfy a rational basis review, for imposing higher and different penalties on licensed professionals who shirked their state tax obligations than on unlicensed individuals, state employees, judges, and certain elected officials; the State may have perceived licensed professionals as more financially secure and better educated, thus increasing the amount of taxes they likely owed and making their neglect less excusable, limiting revocation to licensees may

have been a more efficient way to increase tax compliance, and the decision to sanction judges and elected officials differently from licensees in general was due to the state constitution's limitations on the removal of such officials.

U.S.—Crum v. Vincent, 493 F.3d 988 (8th Cir. 2007).

7 U.S.—Bourjois, Inc., v. Chapman, 301 U.S. 183, 57 S. Ct. 691, 81 L. Ed. 1027 (1937).

Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

8 Mich.—Blue Cross and Blue Shield of Michigan v. Milliken, 422 Mich. 1, 367 N.W.2d 1 (1985).

9 Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

10 U.S.—Gulf, C. & S.F. Ry. Co. v. Ellis, 165 U.S. 150, 17 S. Ct. 255, 41 L. Ed. 666 (1897).

Me.—State v. King, 135 Me. 5, 188 A. 775 (1936).

Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

11 U.S.—Murphy v. People of State of California, 225 U.S. 623, 32 S. Ct. 697, 56 L. Ed. 1229 (1912).

Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

12 Cal.—Ex parte Fuller, 15 Cal. 2d 425, 102 P.2d 321 (1940).

Wash.—In re Binding Declaratory Ruling of Dept. of Motor Vehicles, 87 Wash. 2d 686, 555 P.2d 1361 (1976).

Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

Different treatment of sole proprietors and corporations

Cal.—Topps & Trowsers v. Superior Court, 31 Cal. App. 3d 102, 107 Cal. Rptr. 60 (1st Dist. 1973).

13 Ill.—Lasdon v. Hallihan, 377 Ill. 187, 36 N.E.2d 227 (1941).

Or.—Savage v. Martin, 161 Or. 660, 91 P.2d 273 (1939).

Wash.—In re Binding Declaratory Ruling of Dept. of Motor Vehicles, 87 Wash. 2d 686, 555 P.2d 1361 (1976).

Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

14 Ala.—Avery v. Marengo County Com'n, 646 So. 2d 1347 (Ala. 1994).

15 Md.—Matter of Oldtowne Legal Clinic, P.A., 285 Md. 132, 400 A.2d 1111 (1979).

N.J.—New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 384 A.2d 795 (1978).

16 S.C.—Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue, 356 S.C. 120, 588 S.E.2d 97 (2003).

17 Alaska—Rose v. Commercial Fisheries Entry Com'n, 647 P.2d 154 (Alaska 1982).

W. Va.—Tweel v. West Virginia Racing Commission, 138 W. Va. 531, 76 S.E.2d 874 (1953).

Wis.—Business Brokers Ass'n v. McCauley, 255 Wis. 5, 38 N.W.2d 8 (1949).

18 Iowa—Knepper v. Monticello State Bank, 450 N.W.2d 833 (Iowa 1990).

Md.—Attorney General of Maryland v. Waldron, 289 Md. 683, 426 A.2d 929, 17 A.L.R.4th 794 (1981).

19 Iowa—Knepper v. Monticello State Bank, 450 N.W.2d 833 (Iowa 1990).

20 Cal.—Warden v. State Bar, 21 Cal. 4th 628, 88 Cal. Rptr. 2d 283, 982 P.2d 154 (1999).

21 Iowa—Knepper v. Monticello State Bank, 450 N.W.2d 833 (Iowa 1990).

22 Minn.—Gawel v. Two Plus Two, Inc., 309 N.W.2d 746 (Minn. 1981).

Fla.—Fraternal Order of Police, Metropolitan Dade County, Lodge No. 6 v. Department of State, 392 So. 2d 1296 (Fla. 1980).

Haw.—Maeda v. Amemiya, 60 Haw. 662, 594 P.2d 136 (1979).

As to the standards of equal protection analysis, see §§ 1275 to 1279.

23 Alaska—Matson v. State, Commercial Fisheries Entry Com'n, 785 P.2d 1200 (Alaska 1990).

Ky.—Minor v. Stephens, 898 S.W.2d 71 (Ky. 1995).

Charitable solicitation

Tenn.—State v. Smoky Mountain Secrets, Inc., 937 S.W.2d 905 (Tenn. 1996).

24 U.S.—Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 96 S. Ct. 2488, 49 L. Ed. 2d 220 (1976).

Cal.—Farmers Ins. Exchange v. Cocking, 29 Cal. 3d 383, 173 Cal. Rptr. 846, 628 P.2d 1 (1981).

Colo—City of Montrose v. Public Utilities Com'n of State of Colo., 732 P.2d 1181 (Colo. 1987).

Iowa—Knepper v. Monticello State Bank, 450 N.W.2d 833 (Iowa 1990).

N.C.—In re North Carolina Pesticide Bd. File Nos. IR94-128, IR94-151, IR94-155, 349 N.C. 656, 509 S.E.2d 165 (1998).

25 Conn.—Caldor's, Inc. v. Bedding Barn, Inc., 177 Conn. 304, 417 A.2d 343, 10 A.L.R.4th 230 (1979).

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

26 Ill.—Charles v. City of Chicago, 413 Ill. 428, 109 N.E.2d 790 (1952).
N.C.—State v. Glidden Co., 228 N.C. 664, 46 S.E.2d 860 (1948).
Pa.—Domestic Fuel Co. v. Thomas, 318 Pa. 320, 178 A. 477 (1935).
Wis.—Town of Caledonia v. Racine Limestone Co., 266 Wis. 475, 63 N.W.2d 697 (1954).

27 Mo.—Carney v. Hanson Oil Co., Inc., 690 S.W.2d 404 (Mo. 1985).
As to the effect of the Commerce Clause, see C.J.S., Commerce § 74.

28 Cal.—Endler v. Schutzbank, 68 Cal. 2d 162, 65 Cal. Rptr. 297, 436 P.2d 297 (1968).
Me.—In re Feingold, 296 A.2d 492 (Me. 1972).
Mass.—Marmer v. Board of Registration of Chiropractors, 358 Mass. 13, 260 N.E.2d 672 (1970).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1483

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1483. Regulation of advertising

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3701

Legislation prohibiting or regulating various kinds of advertising may be enacted without violating equal protection although stricter scrutiny applies if the First Amendment is implicated.

Reasonable legislation may be enacted prohibiting or regulating various kinds of advertising without violating equal protection,[1] such as regulating the placement of signs,[2] imposing rules for advertising by lawyers that treat all lawyers the same,[3] or requiring hotels to disclose room charges in their advertisements.[4] Statutes designed to aid the prevention of fraudulent and deceptive practices in advertising have been sustained in the face of equal protection challenges,[5] including laws requiring the disclosure of automobile mileage in advertisements,[6] or prohibiting resident automobile dealers from advertising the invoice price without other disclosures.[7]

The general reasonableness test applicable in equal protection cases[8] is not utilized if First Amendment rights are at stake.[9] Conversely, the preferential treatment accorded ideological speech does not per se deny commercial advertisers equal protection although it has also been ruled that any distinction between commercial and ideological speech must bear a reasonable relationship to legitimate governmental interests.[10] Since commercial speech relating to illegal conduct does not rise to the level

of a fundamental right, a health care statute, which prohibited the business practice of waiving patient obligations to pay health insurance deductibles and copayments, and advertising those practices, is not subject to strict scrutiny in the face of an equal protection challenge but is subject to the rational basis test.[11]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Fla.—Oshins v. York, 150 Fla. 690, 8 So. 2d 670 (1942).
Ill.—Roberts Optical Co. v. Department of Registration and Ed., 4 Ill. 2d 290, 122 N.E.2d 824 (1954).
Mich.—People v. Pennock, 294 Mich. 578, 293 N.W. 759 (1940).
Wis.—Ritholz v. Johnson, 246 Wis. 442, 17 N.W.2d 590 (1945).

2 Me.—Inhabitants of Town of Boothbay v. National Advertising Co., 347 A.2d 419, 81 A.L.R.3d 474 (Me. 1975).

3 Iowa—Iowa Supreme Court Bd. of Professional Ethics & Conduct v. Wherry, 569 N.W.2d 822 (Iowa 1997).

4 Fla.—Adams v. Miami Beach Hotel Ass'n, 77 So. 2d 465 (Fla. 1955).

5 Mo.—State ex rel. Ashcroft v. Goldberg, 608 S.W.2d 385 (Mo. 1980).

6 N.J.—Fenwick v. Kay Am. Jeep, Inc., 72 N.J. 372, 371 A.2d 13 (1977).

7 Mo.—Adams Ford Belton, Inc. v. Missouri Motor Vehicle Com'n, 946 S.W.2d 199 (Mo. 1997).

8 § 1279.

9 Cal.—Wirta v. Alameda-Contra Costa Transit Dist., 68 Cal. 2d 51, 64 Cal. Rptr. 430, 434 P.2d 982 (1967).

10 Colo.—City of Lakewood v. Colfax Unlimited Ass'n, Inc., 634 P.2d 52 (Colo. 1981).
As to the effect of the First Amendment on commercial speech, see § 941.

11 Colo.—Parrish v. Lamm, 758 P.2d 1356, 8 A.L.R.5th 1048 (Colo. 1988).
A.L.R. Library
Validity of state statute prohibiting health providers from the practice of waiving patients' obligation to pay health insurance deductibles or copayments, or advertising such practice, 8 A.L.R.5th 855.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1484

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1484. Financial institutions and transactions; securities regulation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3689, 3702

Financial institutions and transactions may be regulated without denying equal protection.

The rational basis test applies when determining the constitutionality of economic regulations governing financial institutions.[1] Regulations have been upheld, as consistent with equal protection, on such matters as the use of the term "savings" in a company's name,[2] the treatment of depositors when a mutual savings bank is consolidated with another institution,[3] priorities upon the dissolution of an insolvent state-chartered financial institution,[4] barring parties who do not settle with a deposit insurance agency from seeking contribution from settling parties,[5] distinctions between state banks and federal savings and loans with regard to the treatment of joint tenancy accounts,[6] and restrictions on certain entities from pleading usury.[7]

A state may, without violating equal protection, exclude a foreign corporation from doing business as a bank in the state.[8] State statutes providing that an out-of-state bank holding company with its principal place of business in a neighboring state may acquire an in-state bank provided that the other state accords equivalent reciprocal privileges, have a rational basis, and thus do not violate equal protection.[9]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Laws regulating pawnbrokers, designed to prevent trafficking in stolen property, have a rational basis even if they are not applied to other businesses.[10]

A classification system that exempts some categories of securities and transactions from registration is rationally related to legitimate government objectives and does not violate equal protection.[11] A different standard of liability may be applied to bond counsel than is applied to issuers, where the basis for the distinction is rationally related to the overall purpose of a state securities act, and the equal protection rights of the bond counsel are not violated.[12] Different disclosure standards may be applied to a sale of a business through a stock transfer than by an asset sale.[13]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Otero Savings and Loan Ass'n v. Federal Home Loan Bank Bd., 665 F.2d 279 (10th Cir. 1981).

2 Fla.—Greater Miami Financial Corp. v. Dickinson, 214 So. 2d 874 (Fla. 1968).

3 N.H.—In re City Sav. Bank of Berlin, 113 N.H. 378, 309 A.2d 31 (1973).

4 Md.—United Wire, Metal and Mach. Health and Welfare Fund v. State Deposit Ins. Fund Corp., 307 Md. 148, 512 A.2d 1047 (1986).
R.I.—In re Advisory Opinion to Governor (DEPCO), 593 A.2d 943 (R.I. 1991).

5 R.I.—Rhode Island Depositors Economic Protection Corp. v. Brown, 659 A.2d 95 (R.I. 1995).

6 Fla.—In re Estate of Gainer, 466 So. 2d 1055 (Fla. 1985).

7 Wash.—Sparkman & McLean Co. v. Govan Inv. Trust, 78 Wash. 2d 584, 478 P.2d 232 (1970).

8 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).

9 U.S.—Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System, 472 U.S. 159, 105 S. Ct. 2545, 86 L. Ed. 2d 112 (1985).

10 Ga.—Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 608 S.E.2d 639 (2005).
Mo.—City of St. Louis v. Liberman, 547 S.W.2d 452 (Mo. 1977).

11 Mo.—Carney v. Hanson Oil Co., Inc., 690 S.W.2d 404 (Mo. 1985).
N.D.—State v. Goetz, 312 N.W.2d 1 (N.D. 1981).

12 Wash.—Haberman v. Washington Public Power Supply System, 109 Wash. 2d 107, 744 P.2d 1032 (1987), opinion amended on other grounds, 109 Wash. 2d 107, 750 P.2d 254 (1988).

13 Minn.—Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520 (Minn. 1986).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1485

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1485. Regulation of insurance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3694

The business of insurance may be regulated without denying equal protection; distinctions are recognized among the business of insurance and other kinds of business and among the various types of insurance.

Regulations may be made with respect to the business of insurance without denying equal protection.[1] Although the McCarran-Ferguson Act[2] does not limit the applicability of the Equal Protection Clause,[3] the business of insurance is recognized as distinctive in character, justifying statutory regulations not applied to other kinds of business.[4] Distinctions are also recognized among the various types of insurance and insurance companies, so as to justify separate classifications,[5] such as of mutual and stock companies[6] or of hospital service plans and commercial insurance companies.[7] However, despite the manifest differences between mutual and stock companies, equal protection is denied by a statutory discrimination that has no reasonable relation to those differences as where there is no reasonable basis for permitting mutual companies to act through salaried resident employees and excluding stock companies from the same privilege.[8]

Regulations upheld in the face of equal protection challenges have encompassed such matters as contributions by new subscribers to reciprocal insurance companies;[9] employer and individual insurance mandate provisions of the Patient Protection

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

and Affordable Care Act (ACA);[10] prohibitions on the sale of certain life insurance policies, based on a premium-benefit analysis;[11] a prohibition on waiving health insurance deductibles and copayments;[12] provisions that filing of a claim with an insurance liquidator by a third party will release insureds up to liability policy limits;[13] requirements that certain types of companies join an access to insurance plan;[14] conditions on automobile insurers withdrawing from the state, applicable where the company is not ceasing writing that insurance elsewhere;[15] an exemption of certain insurers from a bond requirement;[16] and insolvency insurance for insurance companies[17] and to protect individuals who are insured by insolvent companies.[18]

Equal protection was denied by some regulations directing liability insurance companies to write health insurance, but exempting automobile liability companies,[19] allowing title companies to issue policies on the basis of an attorney's legal opinion only if they were regularly doing so on the statute's effective date,[20] or providing for the suspension of an insurance company's license for its payment of fees to nonresident agents on business within the state,[21] as well as particular regulations applicable to foreign insurance companies.[22]

No-fault insurance.

The imposition of interest on a particular amount of no-fault benefits not paid within a specified period has been upheld in the face of an equal protection challenge,[23] As have statutes denying optional no-fault coverage to residents insured under out-of-state policies but not to those having in-state policies.[24]

Uninsured or underinsured motorist coverage.

Equal protection was not denied by legislation mandating that insurance companies provide uninsured motorist coverage[25] and that the policies contain arbitration provisions that allow the parties to reject any award that exceeds the amount specified in a financial responsibility law.[26]

A public policy bar against an insured's recovery under her uninsured or underinsured policy (UM) of exemplary damages assessed by the jury in an action against an uninsured driver did not violate the insured's equal protection rights, as the statutory requirement for UM coverage ensured that persons injured by uninsured motorists would be compensated for their actual injuries, and the insured could execute an exemplary damages judgment directly against the tortfeasor himself.[27] Additionally, a statute not requiring uninsured motorist insurance coverage for "miss and run" accidents does not violate equal protection since the requirement of physical contact furthers the objective of reducing the possibility of claims based on accidents that were not caused by another motorist.[28]

Rate regulation.

An insured challenging an automobile policy rate statute on equal protection grounds bears a heavy burden of proving that there is no rational basis for the statute.[29] Because a state has a legitimate interest in regulating rates charged by insurance companies, and insurance companies have no constitutional right to be regulated under "open competition" laws, a tort reform act imposing strict regulatory requirements in this regard does not violate insurers' equal protection rights.[30]

A statute prohibiting automobile insurers from considering certain minor speeding violations when establishing rates was subject to the rational basis analysis.[31]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S. Ct. 602, 87 L. Ed. 777, 145 A.L.R. 1113 (1943).

2 15 U.S.C.A. §§ 1011 to 1015, discussed in C.J.S., Insurance § 45.

3 U.S.—Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985).

4 Mo.—Andrus v. Fidelity Mut. Life Ins. Ass'n, 168 Mo. 151, 67 S.W. 582 (1902).
Tenn.—Continental Fire Ins. Co. v. Whitaker & Dillard, 112 Tenn. 151, 79 S.W. 119 (1904).

5 U.S.—Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S. Ct. 602, 87 L. Ed. 777, 145 A.L.R. 1113 (1943).

6 U.S.—German Alliance Ins. Co. v. Lewis, 233 U.S. 389, 34 S. Ct. 612, 58 L. Ed. 1011 (1914).
Contingent liability of policyholder
Statute requiring that stock and mutual insurance companies maintain specified reserve before they may issue policies, but allowing mutual companies alternative of issuing policies with contingent liability provision that is clearly shown on policy, did not deny equal protection to policyholders of mutual companies.
Ill.—People ex rel. Bolton v. Crossley, 36 Ill. 2d 298, 222 N.E.2d 488 (1966).

7 N.J.—New Jersey Ass'n of Independent Ins. Agents v. Hospital Service Plan of New Jersey, 68 N.J. 213, 343 A.2d 739 (1975).

8 U.S.—Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (1937).

9 U.S.—Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S. Ct. 602, 87 L. Ed. 777, 145 A.L.R. 1113 (1943).

10 U.S.—Association of American Physicians & Surgeons, Inc. v. Sebelius, 901 F. Supp. 2d 19 (D.D.C. 2012), aff'd, 746 F.3d 468 (D.C. Cir. 2014), cert. denied, 135 S. Ct. 1024, 190 L. Ed. 2d 829 (2015).

11 Wash.—Omega Nat. Ins. Co. v. Marquardt, 115 Wash. 2d 416, 799 P.2d 235 (1990).

12 Colo.—Parrish v. Lamm, 758 P.2d 1356, 8 A.L.R.5th 1048 (Colo. 1988).
A.L.R. Library
Validity of state statute prohibiting health providers from the practice of waiving patients' obligation to pay health insurance deductibles or copayments, or advertising such practice, 8 A.L.R.5th 855.

13 N.H.—Gonya v. Commissioner, New Hampshire Ins. Dept., 153 N.H. 521, 899 A.2d 278 (2006).

14 Ky.—Stephens v. State Farm Mut. Auto. Ins. Co., 894 S.W.2d 624 (Ky. 1995).

15 N.J.—Matter of Plan for Orderly Withdrawal from New Jersey of Twin City Fire Ins. Co., 129 N.J. 389, 609 A.2d 1248 (1992).

16 Tex.—Mid-American Indem. Ins. Co. v. King, 22 S.W.3d 321 (Tex. 1995).

17 Fla.—Manning v. Travelers Ins. Co., 250 So. 2d 872 (Fla. 1971).
Membership requirements of guaranty fund
Mo.—Casualty Reciprocal Exchange v. Missouri Employers Mut. Ins. Co., 956 S.W.2d 249 (Mo. 1997).

18 Utah—Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n, 564 P.2d 751 (Utah 1977).
Wash.—Aetna Life Ins. Co. v. Washington Life and Disability Ins. Guaranty Ass'n, 83 Wash. 2d 523, 520 P.2d 162 (1974).
Residency requirement for claimants
Wyo.—Wyoming Ins. Guar. Ass'n v. Woods, 888 P.2d 192 (Wyo. 1994).

19 N.C.—Hartford Acc. & Indem. Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

20 Mont.—Montana Land Title Ass'n v. First Am. Title, 167 Mont. 471, 539 P.2d 711 (1975).

21 U.S.—Fidelity & Deposit Co. v. Tafoya, 270 U.S. 426, 46 S. Ct. 331, 70 L. Ed. 664 (1926).

22 Ala.—State v. Firemen's Fund Ins. Co., 223 Ala. 134, 134 So. 858, 77 A.L.R. 1486 (1931).
Ohio—State ex rel. Woodmen Acc. Co. v. Conn, 116 Ohio St. 127, 5 Ohio L. Abs. 175, 156 N.E. 114 (1927).

23 Pa.—Hayes v. Erie Ins. Exchange, 493 Pa. 150, 425 A.2d 419, 14 A.L.R.4th 752 (1981).

24 Ga.—Doran v. Travelers Indem. Co., 254 Ga. 63, 326 S.E.2d 221 (1985).

25 Ill.—Kerouac v. Kerouac, 99 Ill. App. 3d 254, 54 Ill. Dec. 678, 425 N.E.2d 543 (3d Dist. 1981).

26 Ill.—Reed v. Farmers Ins. Group, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).

27 Tex.—Laine v. Farmers Ins. Exchange, 325 S.W.3d 661 (Tex. App. Houston 1st Dist. 2010).

28 Iowa—Claude v. Guaranty Nat. Ins. Co., 679 N.W.2d 659 (Iowa 2004).

29 Iowa—Norland v. Grinnell Mut. Reinsurance Co., 578 N.W.2d 239 (Iowa 1998).

30 Fla.—Smith v. Department of Ins., 507 So. 2d 1080 (Fla. 1987) (rejected on other grounds by, Adams By and Through Adams v. Children's Mercy Hosp., 832 S.W.2d 898 (Mo. 1992)).

31 Iowa—Norland v. Grinnell Mut. Reinsurance Co., 578 N.W.2d 239 (Iowa 1998).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1486

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1486. Sales, merchants, and peddlers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3701 to 3706

Sales may be regulated without denying equal protection.

In the exercise of the police power,[1] a state may, without denial of the equal protection of the laws, regulate the manufacture, distribution, and sale of goods or commodities.[2] Consumer protection statutes have been upheld in the face of equal protection challenges.[3]

Laws regulating peddlers or motorized vendors may be sustained if they bear a reasonable relationship to the objectives intended to be accomplished[4] and on the basis that peddlers, by virtue of the transient nature of their occupation, are distinguishable from merchants who operate at fixed locations.[5] However, it is a violation of equal protection to prohibit door-to-door solicitation by a foreign corporation while exempting local merchants,[6] or to differentiate in favor of charitable solicitors and against commercial ones, where the justification given is an interest in protecting citizens from harassment by peddlers.[7]

A law prohibiting all sales of cigarettes by vending machine does not violate equal protection since it rationally furthers a legitimate state interest in promoting public health.[8] A statute effectively eliminating the automobile brokering businesses did

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

not violate equal protection since it was rationally related to legitimate state interests of assuring a viable system of automobile dealers to provide warranty work, preventing consumer fraud, and assuring accurate collection of sales taxes.[9]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 §§ 699 to 720.

2 U.S.—International Harvester Co. v. State of Missouri ex inf. Attorney General, 234 U.S. 199, 34 S. Ct. 859, 58 L. Ed. 1276 (1914).

3 Mass.—Purity Supreme, Inc. v. Attorney General, 380 Mass. 762, 407 N.E.2d 297, 7 A.L.R.4th 771 (1980).
Mo.—State ex rel. Ashcroft v. Goldberg, 608 S.W.2d 385 (Mo. 1980).
Automobile lemon law appeal provisions
Wash.—Ford Motor Co. v. Barrett, 115 Wash. 2d 556, 800 P.2d 367 (1990).
Bonding of health clubs
Tenn.—State v. Southern Fitness and Health, Inc., 743 S.W.2d 160 (Tenn. 1987).

4 Conn.—Blue Sky Bar, Inc. v. Town of Stratford, 203 Conn. 14, 523 A.2d 467 (1987).
Mass.—Com. v. Gulden, 369 Mass. 965, 341 N.E.2d 262 (1976).
N.J.—Brown v. City of Newark, 113 N.J. 565, 552 A.2d 125 (1989).

5 N.J.—Brown v. City of Newark, 113 N.J. 565, 552 A.2d 125 (1989).

6 Mont.—Tipco Corp., Inc. v. City of Billings, 197 Mont. 339, 642 P.2d 1074 (1982).

7 Ill.—Chicago Tribune Co. v. Village of Downers Grove, 125 Ill. 2d 468, 126 Ill. Dec. 950, 532 N.E.2d 821 (1988).
Telemarketing by professionals on behalf of charities
The Telemarketing Sales Rule (TSR) promulgated by the Federal Trade Commission (FTC), extending various telemarketing restrictions to professional telemarketers who solicited charitable contributions on behalf of nonprofit organization, but not to solicitations by charitable organizations' "in house" staff or volunteers, did not violate equal protection principles.
U.S.—National Federation of the Blind v. F.T.C., 420 F.3d 331, 40 A.L.R. Fed. 2d 721 (4th Cir. 2005).

8 Mass.—Take Five Vending, Ltd. v. Town of Provincetown, 415 Mass. 741, 615 N.E.2d 576 (1993).

9 Kan.—Blue v. McBride, 252 Kan. 894, 850 P.2d 852 (1993), as modified on denial of reh'g, (July 21, 1993).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1487

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1487. Production and marketing of food

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3698, 3700

Regulations with respect to the manufacture, production, handling, or sale of food or agricultural products may be made without denying equal protection.

The manufacture, production, handling, or sale of food or agricultural products may be regulated without denying equal protection.[1] Laws prohibiting or limiting corporate farming have been upheld as furthering a valid state interest in preventing the concentration of agricultural production to the detriment of traditional family units[2] and may rationally differentiate between the production of different farm products.[3] Marketing orders differentiating between geographic areas do not violate equal protection.[4] Courts have also upheld, despite equal protection challenges, laws fixing weight and packaging standards,[5] labeling requirements,[6] regulation of the meatpacking[7] and dairy[8] businesses, regulations on commercial beekeepers,[9] and container return deposit laws.[10]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Merchants' Exchange of St. Louis v. State of Missouri ex rel. Barker, 248 U.S. 365, 39 S. Ct. 114, 63 L. Ed. 300 (1919).

Sale of food from food trucks

Differential treatment between "mobile food units" and free-standing restaurants pursuant to a city ordinance regulating such units, which included a requirement that "mobile food unit" operators demonstrate compliance with cleaning standards, was rationally related to the city's legitimate government interest of ensuring that eating establishments were sanitary and that waste was properly disposed of and thus did not violate the operators' right to equal protection; the units posed a unique threat to public health, as unlike free-standing restaurants, they lacked a physical connection to a plumbing system and generally had no running water, sewage disposal, or on-site grease and waste disposal facilities.

U.S.—Cortes v. City of Houston, 536 F. Supp. 2d 783 (S.D. Tex. 2008).

2 Mo.—State ex rel. Webster v. Lehndorff Geneva, Inc., 744 S.W.2d 801 (Mo. 1988).

3 Neb.—Hall v. Progress Pig, Inc., 259 Neb. 407, 610 N.W.2d 420 (2000).

4 Fla.—Joe Hatton, Inc. v. Conner, 240 So. 2d 145 (Fla. 1970).

5 U.S.—Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934).

Plastic containers

Statute banning retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sales in other nonreturnable, nonrefillable containers, does not deny equal protection since principal purpose was to ease solid waste disposal problems.

U.S.—Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

6 U.S.—Corn Products Refining Co. v. Eddy, 249 U.S. 427, 39 S. Ct. 325, 63 L. Ed. 689 (1919).

7 U.S.—Hygrade Provision Co. v. Sherman, 266 U.S. 497, 45 S. Ct. 141, 69 L. Ed. 402 (1925).

8 U.S.—Sage Stores Co. v. State of Kansas ex rel. Mitchell, 323 U.S. 32, 65 S. Ct. 9, 89 L. Ed. 25 (1944).

Exemption of cooperatives

U.S.—U.S. v. Rock Royal Co-op., 307 U.S. 533, 59 S. Ct. 993, 83 L. Ed. 1446 (1939).

Ordinance forbidding maintenance of dairy within city limits

U.S.—Fischer v. City of St. Louis, 194 U.S. 361, 24 S. Ct. 673, 48 L. Ed. 1018 (1904).

9 N.D.—Richter v. Jones, 378 N.W.2d 209, 55 A.L.R.4th 1213 (N.D. 1985).

A.L.R. Library

Beekeeping regulation: validity and construction, 55 A.L.R.4th 1223.

10 Cal.—Park & Shop Markets, Inc. v. City of Berkeley, 116 Cal. App. 3d 78, 172 Cal. Rptr. 515 (1st Dist. 1981).

Md.—Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 335 A.2d 679, 73 A.L.R.3d 1079 (1975).

Or.—American Can Co. v. Oregon Liquor Control Commission, 15 Or. App. 618, 517 P.2d 691 (1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1488

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1488. Oil and gas production and distribution

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3697

The production, transportation, sale, and storage of oil, gas, and other petroleum products may be regulated without denying equal protection.

The extraction,[1] production,[2] and transportation[3] of oil or gas may be subject to regulation without denying equal protection. A combined inspection and revenue law applicable to petroleum products[4] or a statute for the prevention of waste in the production of gas or crude oil[5] may be reasonable and not deny equal protection.

With regard to retail dealers, courts have upheld the prohibition of the operation of service stations by producers, refiners, or suppliers of petroleum products,[6] and a prohibition of promotional contests or games.[7] A provision that every marketing agreement between a manufacturer and a retail dealer will be subject to certain nonwaivable provisions does not deny equal protection.[8] On the other hand, equal protection is not afforded by discrimination between persons similarly situated, either in the terms of the enforcement of an ordinance dealing with filling stations or the storage of gasoline for sale,[9] or by an ordinance prohibiting delivery of gasoline, within limited areas of a city, into the underground storage tanks of service stations and garages from a vehicle having a capacity in excess of a certain number of gallons since it was not shown that public safety was served by limiting the amount delivered at one time rather than in several loads or excluding deliveries to aboveground tanks.[10]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Swepi, LP v. Mora County, N.M., 2015 WL 365923 (D.N.M. 2015).

2 Cal.—Hunter v. Justice's Court of Centinela Tp., Los AngelesCounty, 36 Cal. 2d 315, 223 P.2d 465 (1950).
Ind.—Stith Petroleum Co. v. Department of Audit and Control of Indiana, 211 Ind. 400, 5 N.E.2d 517 (1937).
La.—Hunter Co. v. McHugh, 202 La. 97, 11 So. 2d 495 (1942).
Allocation of production
Miss.—Texas Pacific Oil Co., Inc. v. Petro Grande, Inc., 328 So. 2d 660 (Miss. 1976).

3 Okla.—Barnes v. Transok Pipeline Co., 1976 OK 27, 549 P.2d 819 (Okla. 1976).
Expansion of gas distribution to unserved areas
N.C.—State ex rel. Utilities Com'n v. Carolina Utility Customers Ass'n, Inc., 336 N.C. 657, 446 S.E.2d 332 (1994).

4 U.S.—Texas Co. v. Brown, 258 U.S. 466, 42 S. Ct. 375, 66 L. Ed. 721 (1922).

5 U.S.—Champlin Refining Co. v. Corporation Com'n of State of Okl., 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A.L.R. 403 (1932).

6 Md.—Governor of Maryland v. Exxon Corp., 279 Md. 410, 370 A.2d 1102 (1977), judgment aff'd, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978).
N.H.—Opinion of the Justices, 117 N.H. 533, 376 A.2d 118 (1977).

7 Mass.—Mobil Oil Corp. v. Attorney General, 361 Mass. 401, 280 N.E.2d 406, 57 A.L.R.3d 1265 (1972).

8 Del.—Atlantic Richfield Co. v. Tribbitt, 399 A.2d 535 (Del. Ch. 1977).

9 Me.—Boothby v. City of Westbrook, 138 Me. 117, 23 A.2d 316 (1941).

10 Nev.—In re Martin, 88 Nev. 666, 504 P.2d 14 (1972).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1489

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1489. Regulation of mining

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3697

Mining may be subjected to regulations that do not unreasonably discriminate.

The occupation of a miner is peculiarly subject to special regulation.[1] Regulations that have been sustained, despite equal protection claims, include of strip mining,[2] regulating dewatering of surface mines,[3] and promoting miner safety.[4]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Md.—American Coal Co. v. Allegany County Com'rs, 128 Md. 564, 98 A. 143 (1916).

2 U.S.—Hodel v. Indiana, 452 U.S. 314, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981).
Tenn.—Doochin v. Rackley, 610 S.W.2d 715 (Tenn. 1981).

3 Md.—Maryland Aggregates Ass'n, Inc. v. State, 337 Md. 658, 655 A.2d 886 (1995).

4 U.S.—Plymouth Coal Co. v. Com. of Pennsylvania, 232 U.S. 531, 34 S. Ct. 359, 58 L. Ed. 713 (1914); Richardson v. Secretary of Labor, 689 F.2d 632 (6th Cir. 1982).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1490

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1490. Sale or use of liquor

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3695

Regulations pertaining to the distribution, sale, and consumption of intoxicating liquors may be upheld under the minimal standard of equal protection analysis.

Equal protection requirements apply to regulations relating to the sale of intoxicating liquors.[1] Since the regulation of liquor distributorships affects purely economic matters, it is subject to the mildest equal protection review in accordance with the rational basis test.[2] In controlling and regulating the sale of intoxicating liquor, a state has broad power[3] and wide discretion[4] to regulate[5] or even prohibit[6] the sale or use of alcoholic beverages without implicating equal protection rights, and to make classifications,[7] such as with respect to persons[8] or places[9] that may engage in the sale of liquor provided the classifications are reasonable and not arbitrary.[10] Justification for the classification must exist, and purely arbitrary treatment may not be sustained,[11] and there is no justification for discriminating among persons similarly situated, who might be, or might desire to become, engaged in the liquor business.[12] Furthermore, those persons who wish to patronize businesses engaged in the sale of alcoholic beverages are entitled to equal protection.[13]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

The Twenty-First Amendment does not have sufficient strength to defeat an otherwise established claim of invidious discrimination in violation of the Equal Protection Clause.[14] Thus, a license or privilege to sell liquor may not be arbitrarily revoked without violating the Equal Protection Clause.[15]

Among the regulations of the sale of alcoholic beverages that have been ruled not to deny equal protection are those concerned with prohibiting sales in nonreturnable containers,[16] importation by only designated wholesalers of a particular brand,[17] imposing additional restrictions on smaller liquor stores in residential areas while exempting larger stores that generally operated outside of residential areas and dedicated less than 10% of their floor space to the sale of alcohol,[18] prohibiting wholesalers from providing financial aid to retail outlets[19] and the extension of credit to beer dealers,[20] limiting an out-of-state supplier's power to terminate local distributors for cause,[21] prohibiting holders of beer and wine licenses from selling liquor by the drink,[22] regulating the days and hours of sale,[23] authorizing a local election to ban sales from drive-up windows,[24] and prohibiting the sale of alcoholic beverages at nude or erotic dance establishments.[25]

A state prohibition on alcoholic beverage advertising, which divides the media into out-of-state advertisers who can advertise alcoholic beverages, and in-state advertisers who cannot, violates the Equal Protection Clause.[26]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 100 S. Ct. 937, 63 L. Ed. 2d 233 (1980).

2 Conn.—Schieffelin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

3 C.J.S., Intoxicating Liquors § 45.

4 U.S.—Barnes v. Merritt, 428 F.2d 284 (5th Cir. 1970).

5 U.S.—Wine And Spirits Retailers, Inc. v. Rhode Island, 481 F.3d 1 (1st Cir. 2007).
Ky.—Beacon Liquors v. Martin, 279 Ky. 468, 131 S.W.2d 446 (1939).
Mich.—Fitzpatrick v. Liquor Control Commission, 316 Mich. 83, 25 N.W.2d 118, 172 A.L.R. 608 (1946).

6 Kan.—Colby Distributing Co., Inc. v. Lennen, 227 Kan. 179, 606 P.2d 102 (1980).
Mich.—Fitzpatrick v. Liquor Control Commission, 316 Mich. 83, 25 N.W.2d 118, 172 A.L.R. 608 (1946).

7 Minn.—George Benz Sons Inc. v. Ericson, 227 Minn. 1, 34 N.W.2d 725 (1948).

8 Mo.—Milgram Food Stores, Inc. v. Ketchum, 384 S.W.2d 510 (Mo. 1964).
Neb.—Bali Hai', Inc. v. Nebraska Liquor Control Commission, 195 Neb. 1, 236 N.W.2d 614 (1975).

9 U.S.—Maxwell's Pic-Pac, Inc. v. Dehner, 739 F.3d 936 (6th Cir. 2014).

10 U.S.—Parks v. Allen, 426 F.2d 610 (5th Cir. 1970).
Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).
Reasonable distinctions
Minn.—Anderson v. City of St. Paul, 226 Minn. 186, 32 N.W.2d 538 (1948).

11 Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).
Local option elections
Ala.—Bynum v. City of Oneonta, 2015 WL 836700 (Ala. 2015).
La.—Nomey v. State, Through Edwards, 315 So. 2d 709 (La. 1975).

12 La.—Nomey v. State, Through Edwards, 315 So. 2d 709 (La. 1975).
Minn.—Anderson v. City of St. Paul, 226 Minn. 186, 32 N.W.2d 538 (1948).

13 La.—Nomey v. State, Through Edwards, 315 So. 2d 709 (La. 1975).

14 U.S.—Craig v. Boren, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976).
Ariz.—Arizona State Liquor Bd. of Dept. of Liquor Licenses and Control v. Ali, 27 Ariz. App. 16, 550 P.2d 663 (Div. 2 1976).
Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

As to the effect of the Twenty-First Amendment, generally, see C.J.S., Intoxicating Liquors §§ 51 to 55.

15 U.S.—Glicker v. Michigan Liquor Control Commission, 160 F.2d 96 (C.C.A. 6th Cir. 1947).

Ga.—Mayor, etc., of Savannah v. Savannah Distributing Co., 202 Ga. 559, 43 S.E.2d 704 (1947).

16 Vt.—Anchor Hocking Glass Corp. v. Barber, 118 Vt. 206, 105 A.2d 271 (1954).

17 U.S.—Rice v. Norman Williams Co., 458 U.S. 654, 102 S. Ct. 3294, 73 L. Ed. 2d 1042 (1982).

18 U.S.—HSH, Inc. v. City of El Cajon, 44 F. Supp. 3d 996 (S.D. Cal. 2014).

19 Idaho—Western Beverage, Inc. v. State, 96 Idaho 588, 532 P.2d 930 (1974).

20 Ill.—Weisberg v. Taylor, 409 Ill. 384, 100 N.E.2d 748 (1951).

Neb.—Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

21 Conn.—Schieffelin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

22 S.C.—Winter v. Pratt, 258 S.C. 397, 189 S.E.2d 7, 89 A.L.R.3d 543 (1972).

23 Fla.—City of Pompano Beach v. Big Daddy's, Inc., 375 So. 2d 281 (Fla. 1979).

Wis.—State v. Reidel, 245 Wis. 467, 15 N.W.2d 161 (1944); State v. Potokar, 245 Wis. 460, 15 N.W.2d 158 (1944).

Sunday laws and exceptions

La.—State v. Trahan, 214 La. 100, 36 So. 2d 652 (1948).

Mich.—Florentine Ristorante, Inc. v. City of Grandville, 88 Mich. App. 614, 278 N.W.2d 694 (1979).

§ 1609.

24 N.M.—Thompson v. McKinley County, 1991-NMSC-076, 112 N.M. 425, 816 P.2d 494 (1991).

25 Iowa—Three K. C. v. Richter, 279 N.W.2d 268 (Iowa 1979).

As to regulation of entertainment establishments, see § 1493.

Even though heightened scrutiny is applied

Ga.—Gravely v. Bacon, 263 Ga. 203, 429 S.E.2d 663 (1993).

26 U.S.—Oklahoma Broadcasters Ass'n v. Crisp, 636 F. Supp. 978 (W.D. Okla. 1985).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1491

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1491. Monopolies, restraints of trade, and cooperative associations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3706

Antitrust laws and statutes authorizing cooperative associations or monopolies do not, in themselves, deny equal protection.

State antitrust laws,[1] and exemptions to them,[2] and statutes authorizing the formation of cooperative marketing associations[3] do not deny equal protection. Furthermore, where there exists an appropriate connection to a state's police power, even the grant of a monopoly does not, in itself, offend equal protection principles.[4] Also, under proper circumstances, a state legislature may treat marketing contracts between a cooperative association and its members as of a separate class.[5] However, a particular provision of a cooperative association act may violate equal protection.[6]

A legislature's failure to include professionals, such as accountants, within an exception contained in a statute providing that contracts in restraint of a lawful profession are void does not violate equal protection, as the classification scheme was rational, in that an important distinction must be drawn between the practice of a profession and the transaction of other types of businesses.[7] On the other hand, a statute denouncing combinations in restraint of trade, but exempting any organization or association having no capital stock or not engaged in the business of mining, manufacturing, or transporting any article or commodity, is based on an erroneous classification and violates the Fourteenth Amendment to the U.S. Constitution.[8]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Miss.—State ex rel. Jordan v. Gilmer Grocery Co., 156 Miss. 99, 125 So. 710 (1930).

2 Ill.—People ex rel. Akin v. Butler St. Foundry & Iron Co., 201 Ill. 236, 66 N.E. 349 (1903).

Newspaper mergers

U.S.—Bay Guardian Co. v. Chronicle Pub. Co., 344 F. Supp. 1155 (N.D. Cal. 1972).

3 Ky.—Potter v. Dark Tobacco Growers' Co-op. Ass'n, 201 Ky. 441, 257 S.W. 33 (1923).

Tenn.—Dark Tobacco Growers' Co-op. Ass'n v. Dunn, 150 Tenn. 614, 266 S.W. 308 (1924).

Wis.—Northern Wisconsin Co-op. Tobacco Pool v. Bekkedal, 182 Wis. 571, 197 N.W. 936 (1923).

4 U.S.—Pacific States Box & Basket Co. v. White, 296 U.S. 176, 56 S. Ct. 159, 80 L. Ed. 138, 101 A.L.R. 853 (1935); Artichoke Joe's California Grand Casino v. Norton, 353 F.3d 712 (9th Cir. 2003).

Postal monopoly

The fact that the postal monopoly encompasses only letter mail and permits private competition in delivery of other mail does not violate the equal protection rights of persons who sought to conduct a private delivery service.

U.S.—U. S. Postal Service v. Brennan, 574 F.2d 712 (2d Cir. 1978).

5 U.S.—Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Marketing Ass'n, 276 U.S. 71, 48 S. Ct. 291, 72 L. Ed. 473 (1928).

6 La.—Louisiana Farm Bureau Cotton Growers' Co-op. Ass'n v. Clark, 160 La. 294, 107 So. 115 (1926).

7 Ala.—Thompson v. Wiik, Reimer & Sweet, 391 So. 2d 1016, 13 A.L.R.4th 651 (Ala. 1980).

8 Ky.—Commonwealth v. Hatfield Coal Co., 186 Ky. 411, 217 S.W. 125 (1919).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1492

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1492. Regulation of particular professions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3683, 3684(1) to 3684(3), 3703

Laws regulating particular professions are subject to the rational relationship test.

The alleged right to practice a profession, such as medicine, unhampered from legislative regulation involves only the traditional rational relationship test[1] for equal protection purposes and not a suspect classification or fundamental interest.[2] Accordingly, equal protection is not denied by most[3] although not all, regulations concerning the profession of medicine and surgery.[4]

Equal protection was not violated by regulations specifically directed at optometrists,[5] pharmacists,[6] and chiropractors.[7] However, some regulations were considered discriminatory against osteopaths.[8]

Although a person's privilege to practice law is protected against state action that contravenes the Equal Protection Clause,[9] with the exception of a few regulations that have been held unconstitutional because of improper classification,[10] regulations applied to the legal profession do not deny equal protection,[11] and any protections to a law license are subject to the very lowest of review under the Due Process and Equal Protection Clauses to the Federal Constitution.[12]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 § 1279.

2 Cal.—D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 112 Cal. Rptr. 786, 520 P.2d 10 (1974).
Kan.—State ex rel. Schneider v. Liggett, 223 Kan. 610, 576 P.2d 221 (1978).

3 Md.—Davis v. State, 183 Md. 385, 37 A.2d 880 (1944).
Mich.—People v. Cramer, 247 Mich. 127, 225 N.W. 595 (1929).
Qualifications, examination, and license
U.S.—State of Missouri ex rel. Hurwitz v. North, 271 U.S. 40, 46 S. Ct. 384, 70 L. Ed. 818 (1926).
Mandatory malpractice insurance requirements
Kan.—State ex rel. Schneider v. Liggett, 223 Kan. 610, 576 P.2d 221 (1978).
Prescribing drugs
Ga.—Jackson v. Composite State Bd. of Medical Examiners of Georgia, 256 Ga. 264, 347 S.E.2d 581 (1986).

4 Ind.—Ice v. State ex rel. Indiana State Bd. of Dental Examiners, 240 Ind. 82, 161 N.E.2d 171 (1959).
Admission to hospital staff
County hospital's requirement that applicants for admission to staff be members of county medical society and that each application be signed by members of active medical staff who were acquainted with applicant, attesting to his or her character and general fitness, was unreasonable and arbitrary, and violative of the Fourteenth Amendment.
U.S.—Foster v. Mobile County Hospital Bd., 398 F.2d 227, 37 A.L.R.3d 637 (5th Cir. 1968).
Dental technicians
Provisions of act excluding dental technicians from working on dental prosthetic appliances when that work requires "presence, aid, assistance or cooperation" of wearer do not violate dental technicians' right to equal protection.
Idaho—Idaho Ass'n of Public Dental Technicians, Inc. v. Idaho Bd. of Dental Examiners, 97 Idaho 631, 550 P.2d 134 (1976).

5 U.S.—Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955).
Distinguished from ophthalmologists
U.S.—Friedman v. Rogers, 440 U.S. 1, 99 S. Ct. 887, 59 L. Ed. 2d 100 (1979).
Qualifications
U.S.—McNaughton v. Johnson, 242 U.S. 344, 37 S. Ct. 178, 61 L. Ed. 352 (1917).

6 **Antirebate law, excepting senior citizens**
N.J.—Matter of C.V.S. Pharmacy Wayne, 116 N.J. 490, 561 A.2d 1160 (1989).

7 Ark.—Stroud v. Crow, 199 Ark. 814, 136 S.W.2d 1025 (1940).
La.—State Bd. of Medical Examiners v. Beatty, 220 La. 1, 55 So. 2d 761 (1951).
Wash.—Ellestad v. Swayze, 15 Wash. 2d 281, 130 P.2d 349 (1942).

8 U.S.—Oliver v. Morton, 361 F. Supp. 1262 (N.D. Ga. 1973).
Ill.—People v. Schaeffer, 310 Ill. 574, 142 N.E. 248 (1923).

9 Alaska—Application of Peterson, 459 P.2d 703, 39 A.L.R.3d 708 (Alaska 1969).
Cal.—Raffaelli v. Committee of Bar Examiners, 7 Cal. 3d 288, 101 Cal. Rptr. 896, 496 P.2d 1264, 53 A.L.R.3d 1149 (1972).
Tenn.—Knowlton v. Board of Law Examiners of Tennessee, 513 S.W.2d 788 (Tenn. 1974).

10 Minn.—In re Grantham, 178 Minn. 335, 227 N.W. 180 (1929).

11 Ala.—In re Sullivan, 283 Ala. 514, 219 So. 2d 346 (1969).
Cal.—Ames v. State Bar, 8 Cal. 3d 910, 106 Cal. Rptr. 489, 506 P.2d 625 (1973).
Ga.—Nathan v. Smith, 230 Ga. 612, 198 S.E.2d 509 (1973).
Ky.—Kentucky State Bar Ass'n v. Tussey, 476 S.W.2d 177 (Ky. 1972).
Or.—Bennett v. Oregon State Bar, 256 Or. 37, 470 P.2d 945, 53 A.L.R.3d 1291 (1970).
Pa.—In re Shigon, 462 Pa. 1, 329 A.2d 235 (1974).
As to laws controlling fees, see § 1494.
Moral character of bar candidate
W. Va.—Frasher v. West Virginia Bd. of Law Examiners, 185 W. Va. 725, 408 S.E.2d 675 (1991).

12 Ark.—Chandler v. Martin ex rel. State, 2014 Ark. 219, 433 S.W.3d 884 (2014).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1493

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1493. Entertainment establishments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3698, 3700

Laws regulating entertainment establishments do not violate equal protection if they have a reasonable relationship to a targeted harm.

Various laws regulating adult entertainment establishments have been found consistent with equal protection where they have a reasonable relationship to the harms associated with unregulated establishments and are properly targeted.[1] Courts have also sustained, in the face of equal protection challenges, regulations relating to the massage business,[2] bingo games,[3] and horse racing.[4]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Maages Auditorium v. Prince George's County, Md., 4 F. Supp. 3d 752 (D. Md. 2014).
Ga.—Quetgles v. City of Columbus, 268 Ga. 619, 491 S.E.2d 778 (1997).
Kan.—Moody v. Board of County Com'rs, 237 Kan. 67, 697 P.2d 1310 (1985).
N.C.—Pitt County v. Dejavue, Inc., 185 N.C. App. 545, 650 S.E.2d 12 (2007).

As to First Amendment concerns, see § 1021.

Adult motion pictures

Wash.—Northend Cinema, Inc. v. City of Seattle, 90 Wash. 2d 709, 585 P.2d 1153, 1 A.L.R.4th 1284 (1978).

Nudity in licensed businesses

Me.—Gabriel v. Town of Old Orchard Beach, 390 A.2d 1065 (Me. 1978).

Adult bookstores

U.S.—East Brooks Books, Inc. v. Shelby County, Tenn., 588 F.3d 360 (6th Cir. 2009).

As to restrictions on selling alcohol in such establishments, see § 1490.

2 Iowa—MRM, Inc. v. City of Davenport, 290 N.W.2d 338 (Iowa 1980).

Utah—City of South Salt Lake v. Hanna, 636 P.2d 472 (Utah 1981).

Va.—Kisley v. City of Falls Church, 212 Va. 693, 187 S.E.2d 168, 51 A.L.R.3d 929 (1972).

Wis.—City of Madison v. Schultz, 98 Wis. 2d 188, 295 N.W.2d 798 (Ct. App. 1980).

3 Kan.—Bingo Catering and Supplies, Inc. v. Duncan, 237 Kan. 352, 699 P.2d 512 (1985).

4 Md.—Silbert v. Ramsey, 301 Md. 96, 482 A.2d 147 (1984).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16B C.J.S. Constitutional Law § 1494

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

I. Trade and Professional Regulation

§ 1494. Laws regulating prices or fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686, 3700, 3704, 3706

Laws controlling prices and fees have generally been sustained under the rational basis test although some laws prohibiting sales below cost have been considered arbitrary.

Equal protection is not necessarily denied by legislative enactments regulating charges or prices.[1] While certain regulations prohibiting the sale of particular merchandise at less than cost have been upheld,[2] such a statute was facially unconstitutional under a state constitution, where the definition of "cost" was not confined to the cost of the product but included all other costs of doing business since this was an arbitrary invasion of the right of merchants to sell competitively.[3]

Statutes limiting attorney's fees in medical malpractice or workers' compensation cases do not violate equal protection where rationally related to a legislative goal.[4] Guidelines for the compensation of attorneys appointed to represent indigent clients have been upheld, in view of the obligation of attorneys to contribute time and services to aid the administration of justice,[5] and absent a showing that the burden of court appointments had been distributed unequally,[6] but a statute imposing a cap on fees paid to attorneys appointed to represent indigent defendants violated the attorneys' right to equal protection where it unequally

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

affected selected lawyers serving under appointment.[7] A requirement that attorneys arbitrate fee disputes has been upheld under the rational basis test, based on the need to provide a swift, inexpensive remedy to correct unreasonable fees.[8]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).
§ 1497.

2 U.S.—Safeway Stores, Inc. v. Oklahoma Retail Grocers Ass'n, Inc., 360 U.S. 334, 79 S. Ct. 1196, 3 L. Ed. 2d 1280 (1959).

3 Ky.—Remote Services, Inc. v. FDR Corp., 764 S.W.2d 80 (Ky. 1989).

4 Ky.—Daub v. Baker Concrete, 25 S.W.3d 124 (Ky. 2000).
N.C.—Tinsley v. City of Charlotte, 747 S.E.2d 145 (N.C. Ct. App. 2013).
N.M.—Wagner v. AGW Consultants, 2005-NMSC-016, 137 N.M. 734, 114 P.3d 1050 (2005).
Tenn.—Newton v. Cox, 878 S.W.2d 105 (Tenn. 1994).
As to the effect of equal protection on the regulation of the legal profession, generally, see § 1492.
A.L.R. Library
Validity of statute establishing contingent fee scale for attorneys representing parties in medical malpractice actions, 12 A.L.R.4th 23.

5 Miss.—Wilson v. State, 574 So. 2d 1338 (Miss. 1990).
Nev.—Daines v. Markoff, 92 Nev. 582, 555 P.2d 490 (1976).

6 Iowa—Lewis v. Iowa Dist. Court for Des Moines County, 555 N.W.2d 216 (Iowa 1996).

7 Ark.—Arnold v. Kemp, 306 Ark. 294, 813 S.W.2d 770 (1991) (holding modified on other grounds by, State v. Post, 311 Ark. 510, 845 S.W.2d 487 (1993)).

8 N.J.—Application of LiVolsi, 85 N.J. 576, 428 A.2d 1268, 17 A.L.R.4th 972 (1981).
A.L.R. Library
Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 A.L.R.4th 993.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law VI XVII J Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Carriers
A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
A.L.R. Index, Municipal Corporations
A.L.R. Index, Public Utilities
A.L.R. Index, States
West's A.L.R. Digest, Constitutional Law 3686

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1495

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

1. In General

§ 1495. Validity under equal protection laws of legislative classifications of public service companies, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Reasonable classifications of public utilities and carriers may be made by the legislature without violating equal protection.

The legislature, in regulating public utilities and carriers, must not violate the constitutional prohibition of denial of equal protection of the laws,[1] and any regulation which is unreasonable in itself, or which contains arbitrary discriminations between persons or corporations similarly situated, is void as a denial of the equal protection of the laws.[2] However, the constitutional guaranty of equal protection of the laws is not necessarily denied by reasonable control and regulation of railroads, motor carriers, telegraph companies, public warehouses, and other public utilities[3] and the administration and enforcement of such regulations by a commission, board, or authority.[4] The legislature is vested with a wide discretion in regulating public utilities and carriers, and a court will not interfere merely because its exercise has produced inequality, which is the result of every selection of subjects or persons for regulation, but only when it has produced an inequality which is actually and palpably unreasonable and arbitrary.[5] For instance, there is no denial of equal protection caused by a classification of utilities into those municipally owned and operated and those privately owned and operated, and separate regulatory treatment thereof or exemption

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

of municipally owned utilities from regulations governing privately owned utilities,[6] a classification of utility service areas or territories,[7] or a limitation of particular regulations to a particular class of utilities.[8]

No denial of equal protection of the laws, or arbitrary classification or discrimination, is made by statutes prohibiting the licensing of public utilities for duplication of service without the acquisition of a certificate of necessity[9] providing that public utilities shall keep books in a certain manner, carry a depreciation account, and not issue stocks without the consent of a specified commission[10] or authorizing a public utility to adopt a fiscal year different from any other state agency.[11]

The fact that the enforcement of a regulation affecting one class of carriers will involve a benefit to another class thereof does not preclude the legislature from making the regulation.[12]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994).
Ill.—Hamlyn v. Rock Island County Metropolitan Mass Transit Dist., 986 F. Supp. 1126 (C.D. Ill. 1997).

2 Alaska—Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975).
Me.—Dickinson v. Maine Public Service Co., 223 A.2d 435 (Me. 1966).
Ohio—Floyd & Co. v. Cincinnati Gas & Elec. Co., 96 Ohio App. 133, 54 Ohio Op. 220, 120 N.E.2d 596 (1st Dist. Hamilton County 1954).
Invidious discrimination
In the local economic sphere, it is only invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.
Cal.—Interstate Marina Development Co. v. County of Los Angeles, 155 Cal. App. 3d 435, 202 Cal. Rptr. 377 (2d Dist. 1984).

3 Ill.—Summers v. Illinois Commerce Commission, 58 Ill. App. 3d 933, 16 Ill. Dec. 336, 374 N.E.2d 1111 (4th Dist. 1978).
Ind.—Johnson County Rural Elec. Membership Corp. v. Public Service Co. of Indiana, Inc., 177 Ind. App. 53, 378 N.E.2d 1 (1978).
Ohio—Weiss v. Pub. Util. Comm., 90 Ohio St. 3d 15, 2000-Ohio-5, 734 N.E.2d 775 (2000).
Foreign corporations
Iowa—State ex rel. Weede v. Iowa Southern Utilities Co. of Delaware, 231 Iowa 784, 2 N.W.2d 372 (1942), opinion modified on other grounds on denial of reh'g, State ex rel. Weede v. Iowa Southern Utilities Co. of Delaware, 4 N.W.2d 869 (Iowa 1942).

4 U.S.—U.S. v. Consolidated Edison Co. of New York, Inc., 580 F.2d 1122, 4 Fed. R. Evid. Serv. 316 (2d Cir. 1978).
Ga.—Fulton County v. Metropolitan Atlanta Rapid Transit Authority, 247 Ga. 420, 276 S.E.2d 583 (1981).
Va.—Old Dominion Power Co., Inc., of Virginia v. State Corp. Com'n, 228 Va. 528, 323 S.E.2d 123 (1984).

5 U.S.—Arkansas Natural Gas Co. v. Arkansas R. R. Com'n, 261 U.S. 379, 43 S. Ct. 387, 67 L. Ed. 705 (1923).
Pa.—Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 34 Pa. Commw. 546, 384 A.2d 273 (1978).
Exemption of existing contracts with municipalities
U.S.—Georgia Ry. & Power Co. v. Town of Decatur, 262 U.S. 432, 43 S. Ct. 613, 67 L. Ed. 1065 (1923).
Priority in allocating gas supplies
Pa.—Housing Authority of City of Pittsburgh v. Pennsylvania Public Utility Commission, 46 Pa. Commw. 419, 406 A.2d 591 (1979).
Rate decisions
Minn.—City of Moorhead v. Minnesota Public Utilities Com'n, 343 N.W.2d 843 (Minn. 1984).

6 U.S.—Springfield Gas & Elec. Co. v. City of Springfield, 257 U.S. 66, 42 S. Ct. 24, 66 L. Ed. 131 (1921).
Kan.—Kansas Gas & Electric Co. v. City of McPherson, 146 Kan. 614, 72 P.2d 985 (1937).
Tenn.—National Gas Distributors v. Sevier County Utility Dist., 7 S.W.3d 41 (Tenn. Ct. App. 1999).

7 Ind.—Indiana & Michigan Elec. Co. v. City of Anderson, 176 Ind. App. 410, 376 N.E.2d 114 (1978).
Okla.—Public Service Co. of Okl. v. Caddo Elec. Co-op., 1970 OK 219, 479 P.2d 572 (Okla. 1970).
S.D.—Matter of Certain Territorial Elec. Boundaries (Mitchell Area) F-3105, 281 N.W.2d 65 (S.D. 1979).

Coercion

A statute which establishes a comprehensive statewide system of utility service territories and assigns territory to each of the state's retail electric suppliers does not violate equal protection by coercing cities into consenting to utilities burdening their streets in violation of the state constitution where the statute does not force cities to consent to have their streets burdened but only determines who will burden the streets.
Ala.—Alabama Power Co. v. Citizens of State of Ala., 527 So. 2d 678 (Ala. 1988).

8 U.S.—Packard v. Banton, 264 U.S. 140, 44 S. Ct. 257, 68 L. Ed. 596 (1924).
Ala.—Storer Cable Communications v. City of Montgomery, Ala., 806 F. Supp. 1518 (M.D. Ala. 1992).
Me.—Central Maine Power Co. v. Public Utilities Com'n, 1999 ME 119, 734 A.2d 1120 (Me. 1999).

9 Ind.—Farmers' & Merchants' Co-op. Telephone Co., Boswell, Ind. v. Boswell Telephone Co., 187 Ind. 371, 119 N.E. 513 (1918).

10 Tenn.—City of Memphis v. Enloe, 141 Tenn. 618, 214 S.W. 71 (1919).

11 S.C.—South Carolina Public Service Authority v. Citizens and Southern Nat. Bank of South Carolina, 300 S.C. 142, 386 S.E.2d 775 (1989).

12 Ind.—Denny v. City of Muncie, 197 Ind. 28, 149 N.E. 639 (1925).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1496

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

1. In General

§ 1496. Protection against failure to pay for services

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Various regulations and credit rules designed to protect a utility from suffering economic losses due to the failure of a consumer to pay for the services supplied have been held not a denial of equal protection of the law.

The courts have upheld, as against challenge on the grounds of equal protection, various regulations and credit rules designed to protect a utility from suffering economic losses due to the failure of consumers to pay for the services supplied,[1] and any classifications of consumers reasonably related to the reduction of bad debt losses are valid whether or not they could be improved upon.[2] Thus, rules and regulations excepting certain classes of persons from the requirement of a security deposit or other proof of credit prior to the furnishing of utility services have been held not to be a denial of equal protection of the law.[3]

Credit rules, which have been promulgated by suppliers of various utility services for the purpose of reducing bad debt losses, and which except from the requirement of a deposit or other proof of credit, as a prerequisite to furnishing the particular service, persons owning realty, persons continuously employed by the same employer for a certain period of time, and other persons able to establish credit to the satisfaction of the supplier, including private pensioners, employees of large corporations, and professionals, do not violate equal protection as imposing a greater hardship on the poor.[4] Moreover, a policy of requiring

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

commercial customers to furnish a cash security deposit before the commencement of utility service does not violate equal protection of the law.[5]

Termination of service.

Rules and regulations which provide that particular classes of persons may have their utility service terminated for nonpayment of past due accounts have been held not to be violative of equal protection, and a utility can have different policies for different classes of customers with respect to the termination of utility service upon delinquency in payment.[6] Generally, a utility's refusal to initiate service to an applicant at a stated address because of an outstanding utility bill in another's name at that address violates equal protection,[7] and it has been held to be a denial of equal protection for the city to refuse utility service to a tenant when the landlord's bills for past service are in arrears.[8] However, a city may, without denying equal protection, terminate utility service to a landlord when his or her tenant's bills are delinquent,[9] and where an owner acquires ownership in property through a foreclosure, ordinances, which provide that a county can refuse to supply utility services if the owner takes title to the premises subject to valid liens created by the delinquent accounts of the prior owners, do not deny equal protection of the law.[10]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Cody v. Union Elec. Co., 502 F. Supp. 1298 (E.D. Mo. 1980).
Cal.—Wood v. Public Utilities Commission, 4 Cal. 3d 288, 93 Cal. Rptr. 455, 481 P.2d 823 (1971).

2 U.S.—Cody v. Union Elec. Co., 502 F. Supp. 1298 (E.D. Mo. 1980).
Cal.—Wood v. Public Utilities Commission, 4 Cal. 3d 288, 93 Cal. Rptr. 455, 481 P.2d 823 (1971).

3 Cal.—Wood v. Public Utilities Commission, 4 Cal. 3d 288, 93 Cal. Rptr. 455, 481 P.2d 823 (1971).

4 Cal.—Wood v. Public Utilities Commission, 4 Cal. 3d 288, 93 Cal. Rptr. 455, 481 P.2d 823 (1971).

5 U.S.—Cody v. Union Elec. Co., 502 F. Supp. 1298 (E.D. Mo. 1980).

6 U.S.—Chatham v. Jackson, 613 F.2d 73 (5th Cir. 1980).
N.Y.—Goldenthal v. New York Tel. Co., 68 Misc. 2d 749, 327 N.Y.S.2d 732 (Sup 1972), order aff'd, 40 A.D.2d 825, 337 N.Y.S.2d 495 (2d Dep't 1972).
Residential and small businesses
U.S.—Center for United Labor Action v. Consolidated Edison Co., 376 F. Supp. 699 (S.D. N.Y. 1974).
Policies regarding pretermination notice
U.S.—Taylor v. Consolidated Edison Co. of New York, Inc., 552 F.2d 39 (2d Cir. 1977).
Ark.—Hibbs v. Arkansas Public Service Commission, 251 Ark. 130, 471 S.W.2d 367 (1971).

7 U.S.—Craft v. Memphis Light, Gas and Water Division, 534 F.2d 684, 21 Fed. R. Serv. 2d 741 (6th Cir. 1976), judgment aff'd, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978).
Or.—Oliver v. Hyle, 14 Or. App. 302, 513 P.2d 806 (1973).

8 U.S.—Davis v. Weir, 497 F.2d 139, 18 Fed. R. Serv. 2d 1497 (5th Cir. 1974).

9 U.S.—Chatham v. Jackson, 613 F.2d 73 (5th Cir. 1980).

10 Ga.—Bowery Sav. Bank v. DeKalb County, 240 Ga. 528, 242 S.E.2d 50 (1978).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1497

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

2. Prescription and Regulation of Rates

§ 1497. Prescription and regulation of rates, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

The State may prescribe reasonable rates to be charged by railroads and other public service companies, without denial of the equal protection of the laws.

A state or political subdivision thereof may, without denial of the equal protection of the laws,[1] prescribe and regulate the rates to be charged by persons and corporations undertaking to supply to the public generally any of the various kinds of public service,[2] such as the rates of railroads,[3] street railways,[4] trucking companies,[5] toll roads or turnpike companies,[6] express companies,[7] taxicabs,[8] ferry service operators,[9] public warehouses,[10] telegraph and telephone companies,[11] "steam loops,"[12] and water,[13] sewerage,[14] gas,[15] and electric[16] companies or authorities. However, while the exercise of a wide discretion in the matter is conceded to the authorities,[17] the prescribed rates must be reasonable;[18] that is, they must allow a fair and reasonable return on the capital employed.[19]

The rate of profit which is regarded as reasonable depends on the particular circumstances, such as the hazard of the investment and the rate of depreciation,[20] as well as changes affecting opportunities for investment, and the money market and business

conditions generally.[21] While the equal protection clauses of the federal and state constitutions do not assure a public utility the right under all conditions and circumstances to have a return on the value of its property used for public service,[22] it is generally acknowledged that a rate below the cost of the service,[23] or a rate or return below a certain percentage,[24] is unreasonable, and the establishment thereof by a state is a deprivation of equal protection of the law.

A legislative prohibition of applications for changes in rates of public service companies during a prescribed period is valid where reasonable[25] but not where unreasonable.[26] A disparity in statutory treatment of rate reductions and suspension of proposed rate increases has been held to represent a reasonable classification which does not violate equal protection.[27]

The U.S. Constitution does not prohibit the government from basing rates for service on factors having nothing to do with the cost of providing such service where the distinction is rationally related to a legitimate governmental interest so long as the classification does not impinge on a fundamental right.[28]

Opportunity to contest.

Equal protection is afforded by the proceedings prescribed for the fixing of rates by a commission and an appeal from its order where the utility company affected is given an opportunity to obtain a hearing on appeal,[29] or provision is made both for a full hearing before the commission and an appeal from its determination.[30] Furthermore, a state which has provided a direct and appropriate proceeding for the contest of the validity of rates prescribed may forbid them to be questioned in a collateral proceeding.[31]

A utility company is not denied equal protection of the laws because it is required to appeal to a commission before appealing to the courts while other utilities are not required to go before the commission.[32]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Stone v. Farmers' Loan & Trust Co., 116 U.S. 307, 6 S. Ct. 334, 29 L. Ed. 636 (1886).

2 U.S.—Munn v. People of State of Illinois, 94 U.S. 113, 24 L. Ed. 77, 1876 WL 19615 (1876).

Legislature or commission

A statute does not deny equal protection of the law because the legislature fixes rates in certain localities and leaves the fixing of rates in other localities to a commission.

N.Y.—Bronx Gas & Electric Co. v. Public Service Commission, First Dist., 190 A.D. 13, 180 N.Y.S. 38 (1st Dep't 1919).

3 Pa.—New York & Pennsylvania Co. v. New York Cent. R. Co., 267 Pa. 64, 110 A. 286 (1920).

Tex.—Angelina & Neches River R. Co. v. Railroad Commission, 246 S.W.2d 928 (Tex. Civ. App. Austin 1952).

Higher rate for short haul may be forbidden

U.S.—Missouri Pac. R. Co. v. McGrew Coal Co., 244 U.S. 191, 37 S. Ct. 518, 61 L. Ed. 1075 (1917).

4 Mass.—Com. v. Interstate Consol. St. Ry. Co., 187 Mass. 436, 73 N.E. 530 (1905), aff'd, 207 U.S. 79, 28 S. Ct. 26, 52 L. Ed. 111 (1907).

5 U.S.—In re TSC Exp. Co., 187 B.R. 29 (Bankr. N.D. Ga. 1995).

6 U.S.—Covington & L. Turnpike Road Co. v. Sandford, 164 U.S. 578, 17 S. Ct. 198, 41 L. Ed. 560 (1896).

7 U.S.—Memphis & L.R.R. Co. v. Southern Exp. Co., 117 U.S. 1, 6 S. Ct. 542, 29 L. Ed. 791 (1886).

8 U.S.—Bartsch v. Washington Metropolitan Area Transit Commission, 357 F.2d 923 (4th Cir. 1966).

9 Mich.—Champion's Auto Ferry, Inc. v. Michigan Public Service Com'n, 231 Mich. App. 699, 588 N.W.2d 153 (1998).

10 U.S.—Brass v. North Dakota ex rel. Stoeser, 153 U.S. 391, 14 S. Ct. 857, 38 L. Ed. 757 (1894).

11 U.S.—E.SPIRE Communications, Inc. v. New Mexico Public Regulation Com'n, 392 F.3d 1204 (10th Cir. 2004).

Ky.—Smith v. Southern Bell Tel. & Tel. Co., 268 Ky. 421, 104 S.W.2d 961 (1937).

12 U.S.—Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994).

13 U.S.—Stanislaus County v. San Joaquin & King's River Canal & Irrigation Co., 192 U.S. 201, 24 S. Ct. 241, 48 L. Ed. 406 (1904).

Fla.—Florida Cities Water Co. v. Board of County Com'rs, Hillsborough County, 244 So. 2d 737 (Fla. 1971).

Ga.—Messenheimer v. Windt, 211 Ga. 575, 87 S.E.2d 402 (1955).

14 U.S.—General Textile Printing and Processing Corp. v. City of Rocky Mount, 908 F. Supp. 1295 (E.D. N.C. 1995).

Mich.—Atlas Valley Golf and Country Club, Inc. v. Village of Goodrich, 227 Mich. App. 14, 575 N.W.2d 56 (1997).

Vt.—Petition of Quechee Service Co., Inc., 166 Vt. 50, 690 A.2d 354 (1996).

15 U.S.—Phillips Petroleum Co. v. State of Okl., 340 U.S. 190, 71 S. Ct. 221, 95 L. Ed. 204 (1950).

N.C.—State ex rel. Utilities Commission v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

16 U.S.—Barasch v. Pennsylvania Public Utility Com'n, 516 Pa. 142, 532 A.2d 325 (1987), decision aff'd, 488 U.S. 299, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989).

Cal.—Pinney & Boyle Co. v. Los Angeles Gas & Electric Corp., 168 Cal. 12, 141 P. 620 (1914).

17 U.S.—Stone v. Farmers' Loan & Trust Co., 116 U.S. 307, 6 S. Ct. 334, 29 L. Ed. 636 (1886).

18 D.C.—Potomac Elec. Power Co. v. Public Service Commission, 380 A.2d 126 (D.C. 1977).

Ill.—City of Edwardsville v. Illinois Bell Telephone Co., 310 Ill. 618, 142 N.E. 197 (1923).

19 Ind.—Indiana General Service Co. v. McCardle, 1 F. Supp. 113 (S.D. Ind. 1932).

Mont.—Great Northern Utilities Co. v. Public Service Commission, 88 Mont. 180, 293 P. 294 (1930).

Pa.—Philadelphia Elec. Co. v. Com., Dept. of Revenue, 114 Pa. Commw. 114, 538 A.2d 607 (1988).

Factors in fixing value

Ohio—Logan Gas Co. v. Public Utilities Commission of Ohio, 121 Ohio St. 507, 169 N.E. 575 (1929).

Double leverage adjustment when holding company involved

Iowa—United Telephone Co. of Iowa v. Iowa State Commerce Commission, 257 N.W.2d 466 (Iowa 1977).

20 U.S.—Chesapeake & O.R. Co. v. Conley, 230 U.S. 513, 33 S. Ct. 985, 57 L. Ed. 1597 (1913).

21 Va.—Alexandria Water Co. v. City Council of Alexandria, 163 Va. 512, 177 S.E. 454 (1934).

22 Tex.—United Gas Public Service Co. v. State, 89 S.W.2d 1094 (Tex. Civ. App. Austin 1935), writ refused, (Oct. 7, 1936) and judgment aff'd, 303 U.S. 123, 58 S. Ct. 483, 82 L. Ed. 702 (1938).

23 U.S.—Western Union Telegraph Co. v. Myatt, 98 F. 335 (C.C.D. Kan. 1899).

Ga.—Georgia Public Service Commission v. Atlanta & W.P.R. Co., 164 Ga. 822, 139 S.E. 725 (1927).

24 U.S.—New York Telephone Co. v. Prendergast, 36 F.2d 54 (S.D. N.Y. 1929).

Rates permitting six per cent annual income upheld

U.S.—Willcox v. Consolidated Gas Co. of New York, 212 U.S. 19, 29 S. Ct. 192, 53 L. Ed. 382 (1909).

25 Cal.—Pinney & Boyle Co. v. Los Angeles Gas & Electric Corp., 168 Cal. 12, 141 P. 620 (1914).

26 N.Y.—Trustees of Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co., 191 N.Y. 123, 83 N.E. 693 (1908).

27 N.Y.—New Rochelle Water Co. v. Public Service Commission, 31 N.Y.2d 397, 340 N.Y.S.2d 617, 292 N.E.2d 767 (1972).

28 U.S.—Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994).

29 U.S.—Jacksonville Gas Co. v. City of Jacksonville, 286 F. 404 (S.D. Fla. 1923).

30 Okla.—Oklahoma Cotton Ginners' Ass'n v. State, 1935 OK 1004, 174 Okla. 243, 51 P.2d 327 (1935).

31 Tex.—Texas & N.O.R. Co. v. Sabine Tram Co., 61 Tex. Civ. App. 353, 121 S.W. 256 (1909), rev'd on other grounds, 227 U.S. 111, 33 S. Ct. 229, 57 L. Ed. 442 (1913).

32 Tex.—Texas Natural Gas Utilities v. City of El Campo, 135 S.W.2d 133 (Tex. Civ. App. Galveston 1939).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1498

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

2. Prescription and Regulation of Rates

§ 1498. Rates for different companies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

It is not necessarily a denial of equal protection to prescribe different rates for different companies engaged in the same business.

The prescription of different rates for different companies engaged in the same business does not of itself constitute a denial of the equal protection of the law;[1] nor is an order reducing a rate of one company void for failure to require other companies in the same business to conform to the same rate.[2]

A classification of public service companies for the purpose of prescribing different regulations as to rates is valid where based on real differences in the character of the service or the conditions under which it is performed and is reasonable in itself.[3] Thus, where proper grounds for a classification may reasonably be conceived of, the presumption of constitutionality is supported and the statute is not invalid on its face,[4] but any classification which operates as a discrimination in the matter of rates between persons or corporations similarly situated constitutes a denial of the equal protection of the laws.[5]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Within these general rules, statutes have been sustained which have excepted street railways and other electric lines,[6] motor carriers,[7] small railroads having only short lines,[8] and new railroads not in operation for a certain length of time,[9] from regulations of the rates of railroads generally. Also, statutes have been sustained which have classified railroads with reference to their gross earnings[10] or gross earnings per mile.[11] However, a statute is void if it limits the rates to be charged by a stockyards corporation doing a certain amount of business but not the rates to be charged by smaller corporations in the same business.[12]

No discrimination may be made as to the rates which may be charged by corporations and by individuals.[13] In this connection, the word "company" used in a statute has been construed to include corporations, firms, and individuals.[14]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Home Tel. & Tel. Co. v. City of Los Angeles, 211 U.S. 265, 29 S. Ct. 50, 53 L. Ed. 176 (1908).
Cal.—Toward Utility Rate Normalization v. Public Utilities Com., 22 Cal. 3d 529, 149 Cal. Rptr. 692, 585 P.2d 491 (1978).
Ga.—Savannah Elec. & Power Co. v. Georgia Public Service Commission, 239 Ga. 156, 236 S.E.2d 87 (1977).
Citizens not similarly situated
Any difference in electric rates between city residents served by different electric utilities, arising from a tariff authorizing an electric company to pass through to its consumers the cost of "undergrounding" power lines, did not violate the Iowa Constitution's equal protection provisions since the citizens serviced by the different public utilities were not similarly situated.
Iowa—City of Coralville v. Iowa Utilities Bd., 750 N.W.2d 523 (Iowa 2008).

2 U.S.—Southern Pac. Co. v. Railroad Commission of Cal., 193 F. 699 (N.D. Cal. 1912).
Ind.—Southern Indiana Ry. Co. v. Railroad Com'n of Indiana, 172 Ind. 113, 87 N.E. 966 (1909).
Tex.—Angelina & Neches River R. Co. v. Railroad Commission, 246 S.W.2d 928 (Tex. Civ. App. Austin 1952).

3 U.S.—Chesapeake & O.R. Co. v. Conley, 230 U.S. 513, 33 S. Ct. 985, 57 L. Ed. 1597 (1913).

4 N.Y.—Transit Commission v. Long Island R. Co., 272 N.Y. 27, 3 N.E.2d 622 (1936).

5 U.S.—Western Ry. of Alabama v. Railroad Commission of Alabama, 197 F. 954 (M.D. Ala. 1912).
N.M.—Community Public Service Co. v. New Mexico Public Service Commission, 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675 (1966).

6 U.S.—Chesapeake & O.R. Co. v. Conley, 230 U.S. 513, 33 S. Ct. 985, 57 L. Ed. 1597 (1913).

7 Tex.—Angelina & Neches River R. Co. v. Railroad Commission, 246 S.W.2d 928 (Tex. Civ. App. Austin 1952).

8 U.S.—Dow v. Beidelman, 125 U.S. 680, 8 S. Ct. 1028, 31 L. Ed. 841 (1888).

9 U.S.—Southern Pac. Co. v. Bartine, 170 F. 725 (C.C.D. Nev. 1909).

10 Mich.—Wellman v. Chicago & G.T.R. Co., 83 Mich. 592, 47 N.W. 489 (1890), aff'd, 143 U.S. 339, 12 S. Ct. 400, 36 L. Ed. 176 (1892).
W. Va.—Coal & Coke Ry. Co. v. Conley, 67 W. Va. 129, 67 S.E. 613 (1910).

11 U.S.—Chicago, B. & Q.R. Co. v. State of Iowa, 94 U.S. 155, 24 L. Ed. 94, 1876 WL 19492 (1876).

12 U.S.—Cotting v. Godard, 183 U.S. 79, 22 S. Ct. 30, 46 L. Ed. 92 (1901).

13 U.S.—Louisville & N. R. Co. v. Railroad Com'n of Tenn., 19 F. 679 (C.C.M.D. Tenn. 1884).

14 Ga.—Atlantic Coast Line R. Co. v. State, 135 Ga. 545, 69 S.E. 725 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914).
N.C.—Efland v. Southern Ry. Co., 146 N.C. 135, 59 S.E. 355 (1907).

End of Document © 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1499

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

2. Prescription and Regulation of Rates

§ 1499. Rates for different consumers, customers, or patrons

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Where there is a rational basis for the distinction, different patrons may be exempt from certain charges, or different rates may be charged different patrons or consumers, without denying equal protection.

Where there is a rational basis for the distinction, a particular patron may be exempted from charges,[1] and different patrons or consumers may be charged different rates[2] where based on differences in the service rendered,[3] where there are differences in costs incurred by the carrier or utility,[4] or where one patron is uniquely in need of special treatment.[5] However, such schemes are void where merely arbitrary,[6] or without a rational basis,[7] or where they inequitably and unreasonably discriminate against different patrons.[8]

There is no denial of equality to or among patrons where equal, uniform, just, and reasonable tolls are charged to everyone on like terms and conditions for the use of a special facility, such as a highway bridge over a navigable river.[9] Furthermore, there is no denial of equal protection where a rate increase is authorized to take effect on different dates for different customers of a public utility.[10] That different patrons are subject to different billing procedures does not deny equal protection where the

classification is reasonable.[11] Also, the establishment of new rates does not deny equal protection of the law to a consumer who has an unexpired contract for a lower rate as the contract was made subject to the right of the State to exercise its regulatory power.[12]

Free or reduced transportation.

A statute providing for free or reduced transportation of certain classes of persons is not invalid as denying equal protection of the laws where there is reasonable ground for the classification, and the law affects equally all persons similarly situated under similar circumstances.[13] Moreover, the absence of free transfer points on bus lines located in one county does not deny equal protection even though free transfer points were maintained on other municipal bus routes in other counties.[14] However, statutes requiring carriers to furnish free transportation to shippers of live stock have been declared void as a denial of the equal protection of the laws;[15] and it has been both affirmed[16] and denied[17] that a requirement that officers and men of the national guard under military orders shall be carried at reduced rates is void as a denial of the equal protection of the laws.

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 N.J.—Camden County v. Pennsauken Sewerage Authority, 15 N.J. 456, 105 A.2d 505 (1954).

2 U.S.—Barket, Levy & Fine, Inc. v. St. Louis Thermal Energy Corp., 21 F.3d 237 (8th Cir. 1994).
Cal.—Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, 75 Cal. App. 3d 13, 141 Cal. Rptr. 794 (2d Dist. 1977).
Md.—Northampton Corp. v. Washington Suburban Sanitary Commission, 278 Md. 677, 366 A.2d 377 (1976).
Rational basis for differing utility rates treatment required
Ga.—Allied Chemical Corp. v. Georgia Power Co., 236 Ga. 548, 224 S.E.2d 396 (1976).
Cable television
Colo.—Manor Vail Condominium Ass'n v. Town of Vail, 199 Colo. 62, 604 P.2d 1168 (1980).

3 **Municipality and private consumers**
U.S.—Willcox v. Consolidated Gas Co. of New York, 212 U.S. 19, 29 S. Ct. 192, 53 L. Ed. 382 (1909).
Consumers within and without municipal territory
Ga.—Barr v. City Council of Augusta, 206 Ga. 753, 58 S.E.2d 823 (1950).
Industrial and residential users
Wyo.—Great Western Sugar Co. v. Johnson, 624 P.2d 1184 (Wyo. 1981).
Schools and counties
Ohio—County Commissioners' Ass'n of Ohio v. Public Utilities Commission of Ohio, 63 Ohio St. 2d 243, 17 Ohio Op. 3d 150, 407 N.E.2d 534 (1980).
Different freight or demurrage charges for different commodities
U.S.—Turner, Dennis & Lowry Lumber Co. v. Chicago, M. & St. P. Ry. Co., 271 U.S. 259, 46 S. Ct. 530, 70 L. Ed. 934 (1926).

4 Ala.—Martin v. City of Trussville, 376 So. 2d 1089 (Ala. Civ. App. 1979), writ denied, 376 So. 2d 1095 (Ala. 1979).
Ill.—Highcrest Management Co. v. Village of Woodridge, 60 Ill. App. 3d 763, 18 Ill. Dec. 162, 377 N.E.2d 315 (2d Dist. 1978).

5 Ohio—County Commissioners' Ass'n of Ohio v. Public Utilities Commission of Ohio, 63 Ohio St. 2d 243, 17 Ohio Op. 3d 150, 407 N.E.2d 534 (1980).

6 Ind.—Indiana Natural & Illuminating Gas Co. v. State, 158 Ind. 516, 63 N.E. 220 (1902).

7 Ill.—Austin View Civic Ass'n v. City of Palos Heights., 85 Ill. App. 3d 89, 40 Ill. Dec. 164, 405 N.E.2d 1256 (1st Dist. 1980).

8 Mo.—Blue Inv. Co. v. City of Raytown, 478 S.W.2d 361 (Mo. 1972).

9 Fla.—Masters v. Duval County, 114 Fla. 205, 154 So. 172 (1934).

10 Ga.—Moore v. Georgia Public Service Commission, 242 Ga. 182, 249 S.E.2d 549 (1978).
N.Y.—New York State Council of Retail Merchants, Inc. v. Public Service Commission, 45 N.Y.2d 661, 412 N.Y.S.2d 358, 384 N.E.2d 1282 (1978).
N.Y.—Stein v. Metropolitan Transp. Authority, 110 Misc. 2d 1027, 443 N.Y.S.2d 340 (Sup 1981).

11 Va.—Com. v. Virginia Elec. & Power Co., 211 Va. 758, 180 S.E.2d 675 (1971).

12 Va.—Commonwealth ex rel. Page Milling Co. v. Shenandoah River Light & Power Corporation, 135 Va. 47, 115 S.E. 695 (1923).

13 Tex.—St. Louis Southwestern Ry. Co. of Tex. v. State, 113 Tex. 570, 261 S.W. 996, 33 A.L.R. 367 (1924).
Reduced rates for school children
Mass.—Commonwealth v. Boston & N. St. Ry. Co., 212 Mass. 82, 98 N.E. 1075 (1912).
Reduced rates for elderly city residents
N.Y.—Westchester County v. Koch, 108 Misc. 2d 764, 438 N.Y.S.2d 951 (Sup 1981), order aff'd, 88 A.D.2d 514, 450 N.Y.S.2d 388 (1st Dep't 1982).

14 N.Y.—Abrams v. Ronan, 44 A.D.2d 535, 353 N.Y.S.2d 444 (1st Dep't 1974), order aff'd, 36 N.Y.2d 714, 367 N.Y.S.2d 484, 327 N.E.2d 638 (1975).

15 Kan.—Atchison, T. & S.F. Ry. Co. v. Campbell, 61 Kan. 439, 59 P. 1051 (1900).

16 Kan.—Ex parte Gardner, 84 Kan. 264, 113 P. 1054 (1911).

17 Minn.—State v. Chicago, M. & St. P. Ry. Co., 118 Minn. 380, 137 N.W. 2 (1912).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1500

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1500. Gas and electric companies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Various regulations affecting gas and electric companies have been held not to deny the equal protection of the law.

Gas and electric companies are not improperly discriminated against or denied equal protection of the laws by a statute requiring them to furnish gas and current on application[1] or, in some cases, by a refusal of a commission to permit them to issue securities against certain property.[2] A statute providing for the regulation and sale of electricity in one county is not invalid although the electric utilities in that county are subjected to burdens not imposed by the State on other electric utilities in other counties.[3]

A requirement that a gas utility break out municipal franchise charges separately on its customer billing, while not separately listing arguably similar expenses on the billings, does not violate equal protection.[4] Similarly, a statute authorizing a gas and electric company owning a specified amount of the stock of another company to merge with the other company does not deny the stockholders of the other company equal protection of the laws.[5] Moreover, equal protection is not violated by a requirement that a gas company include a disclaimer in its advertising, even though the requirement is imposed only upon it and one other utility,[6] or a requirement that electric transmission and distribution facilities submit consumer educational materials regarding

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

deregulation to a public utilities commission; correct misleading, deceptive, or inaccurate materials; and include commission educational materials with their own material even though nonelectric utilities are not subject to a similar requirement.[7]

There is no equal protection violation by a public utilities department in permitting a public corporation formed to develop a wholesale supply of electricity to a municipal electric system to issue only bonds as reasonably necessary to mitigate the adverse consequences of rate shock associated with its investment to date in a nuclear facility while denying all financing for any purposes for investor-owned utilities also having a joint ownership in the nuclear facility.[8]

While the policy expressed in the Tennessee Valley Authority Act, of giving preference in the sale of surplus power to states, counties, municipalities, and cooperative organizations not organized or doing business for profit, discriminates against most power companies, it appears to be within the right of a seller to choose its customers.[9]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Cal.—Hansen v. Vallejo Electric Light & Power Co., 182 Cal. 492, 188 P. 999 (1920).

2 Wis.—Wisconsin Hydro-Electric Co. v. Railroad Commission of Wisconsin, 208 Wis. 348, 243 N.W. 322 (1932).

3 Fla.—Florida Power Corp. v. Pinellas Utility Bd., 40 So. 2d 350 (Fla. 1949).

4 Colo.—City of Montrose v. Public Utilities Commission of State of Colo., 629 P.2d 619 (Colo. 1981).

5 N.Y.—Beloff v. Consolidated Edison Co. of New York, 300 N.Y. 11, 87 N.E.2d 561 (1949).

6 N.Y.—Brooklyn Union Gas Co. v. Public Service Com'n, 101 A.D.2d 453, 478 N.Y.S.2d 78 (3d Dep't 1984).

7 Me.—Central Maine Power Co. v. Public Utilities Com'n, 1999 ME 119, 734 A.2d 1120 (Me. 1999).

8 Mass.—Fitchburg Gas and Elec. Light Co. v. Department of Public Utilities, 395 Mass. 836, 483 N.E.2d 76 (1985).

9 U.S.—Georgia Power Co. v. Tennessee Valley Authority, 14 F. Supp. 673 (N.D. Ga. 1936).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1501

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1501. Motor carriers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Regulations dealing with motor carriers for hire, taxis, and mass transit have been held not to violate equal protection of the law.

The use of public streets and highways for the conduct of the business of a common carrier for hire is a mere privilege which may be granted or withheld by the State or municipality without violating the equal protection clauses of the federal and state constitutions.[1] Thus, regulations which provide that carriers for hire must fulfill certain requirements before being allowed to accept specific types of business,[2] and regulations requiring certain carriers for hire to provide a minimal level of service to the public each day,[3] do not deny equal protection of the laws.

Equal protection of the laws is not denied by requiring a motor carrier to obtain a permit, consent, or certificate of public convenience and necessity;[4] by limiting the number of taxicab operating permits and requiring taxicab owners to meet certain requirements before obtaining permits;[5] or by issuing only one certificate of convenience and necessity[6] and denying certificates to subsequent applicants.[7] Likewise, statutory provisions granting certificates as of right to, and only to, carriers who were

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

operating in good faith on, or have provided adequate, responsible, and continuous service since, a specified date;[8] authorizing new certificates based on old permits in effect on a specified date;[9] or requiring written commission approval before allowing the transfer of a motor carrier permit by permit holders who fail to render the service authorized by the permit,[10] have been upheld as not denying equal protection. Also upheld have been ordinances providing that a taxicab license will be revoked if any licensee is convicted of a felony or any criminal offense involving moral turpitude, and in the case of a corporate licensee, if any officer or director is convicted of a felony, unless the licensee severs its relationship with any such officer or director immediately upon his or her conviction.[11]

A city's taxi cab permit ordinance's renewal provision and minimum-permit requirement have been held rationally related to the city's purposes of creating incentives to invest in infrastructure and increasing quality in the taxicab industry so that the ordinance did not violate equal protection even though the ordinance favored existing firms over new firms.[12] Also, an association representing small taxicab companies, which challenged a city's plan to distribute new taxicab permits based on the size of the taxi company as violative of the Equal Protection Clause, failed to demonstrate that the ordinance was not rationally related to the city's objective of promoting full-service taxi operations that better served consumer needs where, although the distribution plan for new permits was not narrowly tailored, and although there might have been more effective ways of promoting the city's goals, the fact that ordinance provided more permits for all operators, preserved the current market share for solo operators, and provided a petitioning mechanism to convey additional permits to small taxi companies that failed to win the permit lottery was enough to survive rational-basis review.[13]

However, where provision is made for the issuance of permits or licenses on specified terms and conditions, it is an unconstitutional administration of the law and a denial of the equal protection thereof to deny permits or licenses to persons who are willing to comply with the terms and conditions.[14] Thus, a regulation which denied the issuance of a taxicab driver's license to any person who was not a citizen of the United States has been held to deny equal protection to one not a citizen.[15]

Statutes which impose special requirements or restrictions on motor carriers that are transporting cargo or material that poses a major threat to public safety,[16] and statutes requiring all motor carrier vehicles of a particular type to undergo more stringent safety inspections than required to be performed on automobiles,[17] do not violate equal protection.

Regulation of drivers.

It is proper to limit the working hours of drivers or operators[18] and to require taxi drivers to wear innocuous, conventional, and relatively uniform clothing.[19]

Regulating types of vehicles which may be used as limousines.

A county transportation commission rule requiring vehicles operated as limousines to be "luxury" vehicles has a rational basis, as required by equal protection, as the rule is rationally related to prevention of misrepresentations and confusion about vehicles operated as limousines.[20]

Fuel-efficiency and wheelchair accessibility requirements.

A city ordinance imposing fuel-efficiency and wheelchair accessibility requirements on taxicab service companies, but not other transportation companies, does not violate the equal protection rights of a taxicab service company where such companies are not similarly situated to other transportation companies but are unique in that they are the sole transportation providers of

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

their kind that are not already regulated by other entities.[21] Also, a wheelchair accessibility rule promulgated by a city taxi and limousine commission does not violate the equal protection rights of operators of a for-hire livery service.[22]

Financial responsibility requirements.

With the exception of a provision making a bond a lien on the real estate of a personal surety,[23] statutes or ordinances requiring motor carriers, or definite classes thereof, to file indemnity bonds or insurance policies[24] issued by companies authorized to do business in the state[25] are held not to deny equal protection of the laws.

CUMULATIVE SUPPLEMENT

Cases:

Federal Motor Carrier Safety Administration's (FMCSA) determination that interstate trucking company violated regulation requiring each driver used by a motor carrier to record the driver's duty status for each 24-hour period using a certain, proscribed method, by failing to require drivers to record their duty status on an electronic logging device, was not arbitrary and capricious under the Administrative Procedure Act (APA); company conceded that one of its drivers submitted inaccurate records of his duty status numerous times, which was sufficient to find that company did not qualify for the short-haul exemption and so was required to have its drivers record their duty status on an electronic logging device, and company could not shift the blame to its employees for its noncompliance. 5 U.S.C.A. § 706(2)(A); 49 C.F.R. § 395.8(a)(1)(i). Sorreda Transport, LLC v. United States Department of Transportation, 980 F.3d 1 (1st Cir. 2020).

Even if ride-sharing service companies and taxicab companies were similarly situated, any failure by city parking authority to subject ride-sharing companies to same regulatory burdens as taxicab companies did not violate taxicab companies' equal protection rights under disparate treatment theory of liability, since city parking authority's absence of regulation was well within its discretionary rights to regulate taxicabs, whether because of financial pressures, public acceptance of ride-sharing service companies, availability, or internal administrative decision making. U.S. Const. Amend. 14; 53 Pa. Cons. Stat. Ann. §§ 5701–5745, 57A01–57A22. Checker Cab Philadelphia v. Philadelphia Parking Authority, 306 F. Supp. 3d 710 (E.D. Pa. 2018).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Schwartzman Service v. Stahl, 60 F.2d 1034 (W.D. Mo. 1932).
Cal.—In re Graham, 93 Cal. App. 88, 269 P. 183 (2d Dist. 1928).
Ga.—Schlesinger v. City of Atlanta, 161 Ga. 148, 129 S.E. 861 (1925).

2 **Airport pickups**
Ky.—Dixie Taxi Service, Inc. v. Louisville and Jefferson County Air Bd., 465 S.W.2d 273 (Ky. 1971).
Cruise ship passenger pickups limited to association members
U.S.—Jackson v. West Indian Co., Ltd., 35 V.I. 269, 944 F. Supp. 423 (D.V.I. 1996).

3 N.Y.—Pavle-Marty Cab Corp. v. City of New York, 48 N.Y.2d 784, 423 N.Y.S.2d 915, 399 N.E.2d 945 (1979).

4 U.S.—Stephenson v. Binford, 53 F.2d 509 (S.D. Tex. 1931), aff'd, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).
Wis.—Clintonville Transfer Line v. Public Service Commission, 248 Wis. 59, 21 N.W.2d 5 (1945).

5 U.S.—Delta Cab Ass'n, Inc. v. City of Atlanta, Ga., 44 F. Supp. 3d 1243 (N.D. Ga. 2014).

6 U.S.—Arneson v. Denny, 25 F.2d 988 (W.D. Wash. 1928).
Neb.—Council Bluffs Transit Co. v. City of Omaha, 154 Neb. 717, 49 N.W.2d 453 (1951).

7 U.S.—Bradley v. Public Utilities Commission of Ohio, 289 U.S. 92, 53 S. Ct. 577, 77 L. Ed. 1053, 85 A.L.R. 1131 (1933).
Neb.—Council Bluffs Transit Co. v. City of Omaha, 154 Neb. 717, 49 N.W.2d 453 (1951).

8 U.S.—Stanley v. Public Utilities Commission of Maine, 295 U.S. 76, 55 S. Ct. 628, 79 L. Ed. 1311 (1935).
Va.—J.E. Sheets Taxicab Co. v. Com., 140 Va. 325, 125 S.E. 431 (1924).

9 Tex.—Railroad Commission v. Texas & P. R. Co., 138 Tex. 148, 157 S.W.2d 622 (1941).

10 Idaho—Kent v. Idaho Public Utilities Commission, 93 Idaho 618, 469 P.2d 745 (1970).

11 U.S.—M & Z Cab Corp. v. City of Chicago, 18 F. Supp. 2d 941 (N.D. Ill. 1998).

12 U.S.—Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo., 742 F.3d 807 (8th Cir. 2013).

13 U.S.—Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, Tex., 660 F.3d 235 (5th Cir. 2011).

14 Ga.—McWhorter v. Settle, 202 Ga. 334, 43 S.E.2d 247 (1947).

15 N.Y.—Sundram v. City of Niagara Falls, 77 Misc. 2d 1002, 357 N.Y.S.2d 943 (Sup 1973), judgment aff'd, 44 A.D.2d 906, 356 N.Y.S.2d 1023 (4th Dep't 1974).

16 U.S.—New Hampshire Motor Transport Ass'n v. Flynn, 751 F.2d 43, 78 A.L.R. Fed. 273 (1st Cir. 1984).

17 U.S.—American Trucking Associations, Inc. v. Larson, 683 F.2d 787 (3d Cir. 1982).

18 U.S.—H.P. Welch Co. v. State of New Hampshire, 306 U.S. 79, 59 S. Ct. 438, 83 L. Ed. 500 (1939).
Indirect limitation through lease rate regulations upheld
U.S.—Yellow Cab Co. v. City of Chicago, 919 F. Supp. 1133 (N.D. Ill. 1996).

19 U.S.—Branch v. Franklin, 499 F. Supp. 2d 1321 (N.D. Ga. 2007), aff'd, 285 Fed. Appx. 573 (11th Cir. 2008).

20 U.S.—Leib v. Hillsborough County Public Transp. Com'n, 558 F.3d 1301 (11th Cir. 2009).

21 Minn.—Rainbow Taxi Corp. v. City of Minneapolis, 2009 WL 1444100 (Minn. Ct. App. 2009).

22 N.Y.—Transportation Unlimited Car Service, Inc. v. New York City Taxi and Limousine Com'n, 11 A.D.3d 384, 784 N.Y.S.2d 41 (1st Dep't 2004).

23 Ill.—Checker Taxi Co. v. Collins, 320 Ill. 605, 151 N.E. 675 (1926).

24 U.S.—Continental Baking Co. v. Woodring, 55 F.2d 347 (D. Kan. 1931), aff'd, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
N.Y.—People v. Martin, 203 A.D. 423, 197 N.Y.S. 28 (1st Dep't 1922), aff'd, 235 N.Y. 550, 139 N.E. 730 (1923).
Tex.—Ex parte Schutte, 118 Tex. Crim. 182, 42 S.W.2d 252 (1930).

25 U.S.—Sprout v. City of South Bend, Ind., 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833, 62 A.L.R. 45 (1928).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1502

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1502. Motor carriers—Mass transit; street railroads

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

A mass transit authority or a street railroad company may be regulated by the legislature without denying equal protection of the law.

A mass transit authority may be regulated by the legislature without denying equal protection of the law.[1] Thus, the number of members or representatives from each government unit participating in a transit authority, and whether the authority members would be appointed or elected, may be regulated by the legislature, as creator of the authority, without denying city citizens equal protection of the law.[2]

An ordinance may prohibit any motor bus from stopping in a city to receive or discharge passengers except at designated points unless the operator has a franchise from the city.[3] Moreover, a statute providing that only certain existing carrier systems may be entitled to compensation for losses incurred by competition from a public transit system does not deny equal protection of the laws.[4]

On the other hand, a transit authority's reduced fare program for persons with disabilities violates the equal protection rights of persons with Acquired Immune Deficiency Syndrome (AIDS) by excluding them from eligibility.[5]

Street railroad companies.

A street railroad company may be required, without denial of the equal protection of the laws, to comply with a variety of regulatory requirements and restrictions;[6] however, an ordinance is void which requires the installation by the company of safety devices subject to the arbitrary approval of certain public officials.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—City of Atlanta v. Metropolitan Atlanta Rapid Transit Authority, 636 F.2d 1084 (5th Cir. 1981).

2 U.S.—City of Atlanta v. Metropolitan Atlanta Rapid Transit Authority, 636 F.2d 1084 (5th Cir. 1981).
Tex.—City of Humble v. Metropolitan Transit Authority, 636 S.W.2d 484 (Tex. App. Austin 1982), writ refused n.r.e., (Feb. 16, 1983).

3 Tex.—Town of Ascarate v. Villalobos, 148 Tex. 254, 223 S.W.2d 945 (1949).

4 Cal.—Peerless Stages, Inc. v. Santa Cruz Met. Transit Dist., 67 Cal. App. 3d 343, 136 Cal. Rptr. 567 (1st Dist. 1977).

5 U.S.—Hamlyn v. Rock Island County Metropolitan Mass Transit Dist., 986 F. Supp. 1126 (C.D. Ill. 1997).

6 U.S.—Ft. Smith Light & Traction Co. v. Board of Imp. of Paving Dist. No. 16 of City of Ft. Smith, Ark., 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).
Minn.—State v. St. Paul City Ry. Co., 117 Minn. 316, 135 N.W. 976 (1912).
S.C.—Thomas v. Spartanburg Ry., Gas & Elec. Co., 100 S.C. 478, 85 S.E. 50 (1915).
Refusal of permission to partially abandon consolidated franchise
U.S.—Broad River Power Co. v. State of South Carolina ex rel. Daniel, 281 U.S. 537, 50 S. Ct. 401, 74 L. Ed. 1023 (1930), aff'd, 282 U.S. 187, 51 S. Ct. 94, 75 L. Ed. 287 (1930).

7 Ind.—City of Elkhart v. Murray, 165 Ind. 304, 75 N.E. 593 (1905).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1503

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1503. Motor carriers—Transportation of farm or forest products or farm implements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

An exemption of motor vehicles engaged in the transportation of farm products and the like is invalid as between motor carriers doing the same business in the same way; but this rule may not extend to a provision which merely puts carriers of such products in another class instead of affording an entire exemption, and statutes limited to farmers, dairymen, and the like transporting their own products and, at the most, only occasionally transporting the products of others for hire are valid.

An exemption of motor vehicles engaged in the transportation of farm products and the like is invalid as between motor carriers doing the same business in the same way;[1] but this rule may not extend to a provision which merely puts carriers of such products in another class instead of affording an entire exemption,[2] and statutes limited to farmers, dairymen, and the like transporting their own products and, at the most, only occasionally transporting the products of others for hire are valid.[3] An exemption in favor of those hauling logs and lumber from the forest to mills or shipping points relates to a limited class of transportation and is not unreasonable.[4]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

An exemption of motor vehicles while engaged exclusively in the transportation of fresh fruits and vegetables from farms to canneries during the canning or packing season is valid as dealing with a particular kind of transportation which is sui generis and reasonably distinctive from general transportation, at least in a state where, owing to early frosts and road conditions, the period for transporting these perishable products from farms to canneries is of exceedingly short duration.[5]

An exemption of the transportation of farm implements by motor truck may be invalid;[6] however, such an exemption is valid if construed to be limited to the movement or operation of farm machinery or equipment on its own wheels.[7]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—Smith v. Cahoon, 283 U.S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).
Cal.—Franchise Motor Freight Ass'n v. Seavey, 196 Cal. 77, 235 P. 1000 (1925).
Ky.—Priest v. State Tax Com'n, 258 Ky. 391, 80 S.W.2d 43 (1935).

2 U.S.—Deppman v. Murray, 5 F. Supp. 661 (W.D. Wash. 1934).
Commodities in natural state
A state statute validating permits of carriers of agricultural commodities in natural state did not deny equal protection.
U.S.—Inman v. Railroad Commission, 478 S.W.2d 124 (Tex. Civ. App. Austin 1972), writ refused n.r.e., (July 19, 1972).

3 U.S.—Hicklin v. Coney, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).
Colo.—Bushnell v. People, 92 Colo. 174, 19 P.2d 197 (1933).
Exemption applied to transportation by farmers on cooperative plan
U.S.—Schwartzman Service v. Stahl, 60 F.2d 1034 (W.D. Mo. 1932).
Trucks of creamery companies not operated for consideration exempt
Or.—Anderson v. Thomas, 144 Or. 572, 26 P.2d 60 (1933).

4 U.S.—Hicklin v. Coney, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933).
Me.—State v. King, 135 Me. 5, 188 A. 775 (1936).
Partial exemption and different regulation upheld
Or.—Anderson v. Thomas, 144 Or. 572, 26 P.2d 60 (1933).

5 Me.—State v. King, 135 Me. 5, 188 A. 775 (1936).

6 Cal.—Franchise Motor Freight Ass'n v. Seavey, 196 Cal. 77, 235 P. 1000 (1925).

7 U.S.—Louis v. Boynton, 53 F.2d 471 (D. Kan. 1931).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1504

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1504. Railroads

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Railroads may be required, without denial of equal protection, to maintain their facilities and equipment and provide adequate levels of service to the public.

Although statutes authorizing the recovery of double damages plus attorney's fees for animals killed on an unfenced railroad right of way, without proof of negligence, are invalid as denying equal protection of the law,[1] railroad companies may be required, without denial of equal protection of the laws, to fence their tracks or rights-of-way and maintain cattle guards.[2]

Without denying equal protection, railroad companies may also be required to eliminate grade crossings,[3] open streets under their tracks,[4] construct and keep in repair viaducts over their tracks,[5] construct warning devices,[6] maintain signals and gates at street or highway crossings,[7] make certain signals on approaching a crossing,[8] maintain interlocking plants at railroad crossings,[9] and provide a uniform cap for employees whose duties relate to the transportation of passengers or their baggage.[10]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

Moreover, a railroad may also be required, without denying equal protection, to cease the operation on certain streets of a city,[11] remove their tracks from certain places in the interest of the public safety,[12] conform to reasonable regulations as to the movement and speed of trains within the limits of a city,[13] equip locomotives with a certain kind of headlights,[14] heat cars in a certain way,[15] maintain reasonable conveniences at stations,[16] maintain an agent at a station doing sufficient business annually to justify it,[17] post notices of all trains that are late,[18] furnish adequate telephone connections between their offices and the local telephone exchange,[19] and furnish reasonably adequate facilities and service for the transportation of freight and passengers[20] and the removal of freight from railroad premises.[21]

Railroads also may be required, without denial of equal protection, to transport goods without unreasonable delay;[22] make reasonably prompt settlement of claims by shippers;[23] employ a specified number of crew members, including a certain number of brakemen, firemen, or helpers in particular freight train or switching crews;[24] erect and maintain buildings or sheds at important points for the protection of employees against inclement weather while repairing railroad equipment;[25] serve conflicting interests without preference;[26] build a siding to an elevator;[27] construct and maintain physical connections, switches, etc., at intersections with other railroads;[28] accept without unloading goods tendered in carload lots by connecting carriers;[29] make joint rates with,[30] sell through tickets over,[31] and assume responsibility for transportation over[32] connecting lines; make reasonable connections of their passenger trains with the passenger trains of other roads;[33] and, if foreign corporations, become resident corporations as a condition of the right to continue to operate the portions of their roads which are within the state.[34]

Similarly, without denial of equal protection of the laws, railroads may be forbidden to remove their general offices, machine shops, or roundhouses from places at which they have been located for a consideration;[35] prohibited from switching across the principal street of a city on particular tracks;[36] or forbidden to allow noxious weeds to go to seed, or required to exterminate such weeds, on rights of way.[37] A railroad may be denied the right to discontinue all passenger service on a part of its line.[38] Furthermore, it is not a denial of equal protection of the laws to authorize a railroad company to refund its valid indebtedness through a majority vote of stockholders over the protest of minority stockholders.[39]

A requirement that railroad companies remove or elevate their bridges over rivers or other watercourses may be so framed as not to deny equal protection of the laws;[40] however, a state may not arbitrarily select one railroad company and require it to raise its tracks at a particular place to prevent the obstruction of traffic by reason of overflows where all other railroads, and even the same railroad at other places, in the state are subject to overflows which prevent the operation of trains.[41]

While a railroad company may, without denial of equal protection of the laws, be required to make and pay for grade crossings;[42] share with a city the costs of reconstruction of any crossing;[43] construct a sidewalk, at a street crossing, to connect with and correspond with sidewalks constructed by the municipality or adjoining property owners;[44] and when a highway in an incorporated village is being paved, pave such portion of the highway as crosses the right of way,[45] it is denied equal protection of the law by a statute requiring it to construct all of a highway lying within its right of way in addition to paying an assessment as a taxpayer[46] or requiring it to furnish at its own expense a crossing to connect two parts of a farm after it has acquired a right of way across the farm and paid the owner full compensation for all matured and expected damages.[47]

It has been held that equal protection of the laws is not denied by an order of a commission requiring railroads to construct a union passenger station[48] or by a statute requiring every railroad to establish and maintain a depot or station facility in every incorporated village or every municipality of a certain minimum size through which the road passes.[49] On the other hand, equal protection is denied by an order requiring one railroad, but not other railroads passing through the same town or city, to maintain

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

a standard freight and passenger depot[50] or a statute relating to maintenance or abandonment of depots and arbitrarily limited to depots erected in consideration of donations.[51]

A statute permitting a state transportation department to determine rental rates for property leased from the railroad is rationally related to a legitimate state interest in assuring that businesses which locate their operations on railroad property and invest in permanent physical structures on that land are not forced to submit to unjust lease terms due to the parties' unequal bargaining power and thus does not violate equal protection.[52]

CUMULATIVE SUPPLEMENT

Cases:

An adequate state remedy for a deprivation of property provides all the due process that a plaintiff suing state officers for such deprivation is entitled to. U.S.C.A. Const.Amend. 14. DKCLM, Ltd. v. County of Milwaukee, 794 F.3d 713 (7th Cir. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Fla.—Atlantic Coast Line R. Co. v. Ivey, 148 Fla. 680, 5 So. 2d 244, 139 A.L.R. 973 (1941).

2 Ala.—Ex parte Hines, 205 Ala. 17, 87 So. 691 (1920).
Okla.—Union Pacific R.R. Co. v. State ex rel. Corp. Com'n, 1999 OK CIV APP 99, 990 P.2d 328 (Div. 1 1999), as corrected, (July 27, 1999).
Repair or replacement of fence
Okla.—State ex rel. Oklahoma Corp. Com'n v. Burlington Northern and Santa Fe Ry. Co., 2001 OK CIV APP 55, 24 P.3d 368 (Div. 2 2000).

3 U.S.—Lehigh Valley R. Co. v. Board of Public Utility Com'rs, 278 U.S. 24, 49 S. Ct. 69, 73 L. Ed. 161, 62 A.L.R. 805 (1928).

4 Kan.—City of Emporia v. Atchison, T. & S.F. Ry. Co., 88 Kan. 611, 129 P. 161 (1913).

5 U.S.—Chicago, B. & Q.R. Co. v. State ex rel. City of Omaha, 170 U.S. 57, 18 S. Ct. 513, 42 L. Ed. 948 (1898).

6 U.S.—Southern Ry. Co. v. City of Morristown, 448 F.2d 288 (6th Cir. 1971).

7 U.S.—Southern Ry. Co. v. City of Morristown, 448 F.2d 288 (6th Cir. 1971).

8 U.S.—Southern Ry. Co. v. Shealey, 382 F.2d 752 (5th Cir. 1967).

9 Ind.—Cincinnati, R. & F. W. Ry. Co. v. Railroad Commission of Ind., 180 Ind. 243, 102 N.E. 852 (1913).

10 Mass.—McQuade v. New York Cent. R. Co., 320 Mass. 35, 68 N.E.2d 185 (1946).

11 U.S.—Richmond, F. & P.R. Co. v. City of Richmond, 96 U.S. 521, 24 L. Ed. 734, 1877 WL 18527 (1877).

12 Vt.—Bacon v. Boston & M.R.R., 83 Vt. 421, 76 A. 128 (1910).

13 U.S.—Erb v. Morasch, 177 U.S. 584, 20 S. Ct. 819, 44 L. Ed. 897 (1900).

14 U.S.—Atlantic Coast Line R. Co. v. State of Georgia, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914).

15 U.S.—New York, N.H. & H.R. Co. v. People of the State of New York, 165 U.S. 628, 17 S. Ct. 418, 41 L. Ed. 853 (1897).

16 Tex.—Fort Worth & D.C. Ry. Co. v. State, 275 S.W. 111 (Tex. Civ. App. Amarillo 1925), writ dismissed, 274 U.S. 718, 47 S. Ct. 589, 71 L. Ed. 1323 (1927).

17 Minn.—Abrahamson v. Canadian Northern Ry. Co., 177 Minn. 136, 225 N.W. 94 (1929).

18 Ind.—Pennsylvania Co. v. State, 142 Ind. 428, 41 N.E. 937 (1895).

19 Neb.—State v. Missouri Pac. Ry. Co., 100 Neb. 700, 161 N.W. 270 (1916).

20 U.S.—Chesapeake & O. Ry. Co. v. Public Service Com'n of West Virginia, 242 U.S. 603, 37 S. Ct. 234, 61 L. Ed. 520 (1917).

21 U.S.—Norfolk & W. Ry. Co. v. Public Service Commission of West Virginia, 265 U.S. 70, 44 S. Ct. 439, 68 L. Ed. 904 (1924).

22 Tex.—Texas Cent. R. Co. v. Hannay-Frerichs & Co., 130 S.W. 250 (Tex. Civ. App. 1910), modified on other grounds, 104 Tex. 603, 142 S.W. 1163 (1912).

23 U.S.—Seaboard Air Line Ry. v. Seegers, 207 U.S. 73, 28 S. Ct. 28, 52 L. Ed. 108 (1907).

24 U.S.—Brotherhood of Locomotive Firemen and Enginemen v. Chicago, R.I. & P.R. Co., 393 U.S. 129, 89 S. Ct. 323, 21 L. Ed. 2d 289 (1968).

25 U.S.—Chicago & N.W. Ry. Co. v. Railroad and Warehouse Com'n of Minnesota, 280 F. 387 (D. Minn. 1922).

26 La.—State ex rel. Cumberland Telephone & Telegraph Co. v. Texas & P. Ry. Co., 52 La. Ann. 1850, 28 So. 284 (1900).

27 Kan.—Chicago, R.I. & P. Ry. Co. v. Public Utilities Commission, 111 Kan. 805, 208 P. 576 (1922).

28 N.D.—Milhollan v. Great Northern Ry. Co., 53 N.D. 73, 204 N.W. 994 (1925).

29 U.S.—Chicago, M. & St. P. Ry. Co. v. State of Iowa, 233 U.S. 334, 34 S. Ct. 592, 58 L. Ed. 988 (1914).

30 Minn.—Jacobson v. Wisconsin, M. & P.R. Co., 71 Minn. 519, 74 N.W. 893 (1898), aff'd, 179 U.S. 287, 21 S. Ct. 115, 45 L. Ed. 194 (1900).

31 Ga.—Stephens v. Central of Georgia Ry. Co., 138 Ga. 625, 75 S.E. 1041 (1912).

32 S.C.—Venning v. Atlantic Coast Line R. Co., 78 S.C. 42, 58 S.E. 983 (1907).

33 U.S.—Atlantic Coast Line R. Co. v. North Carolina Corporation Commission, 206 U.S. 1, 27 S. Ct. 585, 51 L. Ed. 933 (1907).

34 Ky.—Commonwealth v. Mobile & O.R. Co., 23 Ky. L. Rptr. 784, 64 S.W. 451 (Ky. 1901).

35 Tex.—International & G.N. Ry. Co. v. Anderson County, 174 S.W. 305 (Tex. Civ. App. Texarkana 1915), writ refused, (Apr. 5, 1916) and aff'd, 246 U.S. 424, 38 S. Ct. 370, 62 L. Ed. 807 (1918).

36 U.S.—Illinois Cent. R. Co. v. City of Mayfield, 35 F.2d 808 (C.C.A. 6th Cir. 1929).

37 Ill.—People ex rel. Miller v. Chicago, M. & St. P. Ry. Co., 319 Ill. 241, 149 N.E. 778 (1925).

38 U.S.—Southern Ry. Co. v. South Carolina Public Service Commission, 31 F. Supp. 707 (E.D. S.C. 1940).

39 Mass.—Brown v. Boston & M.R.R., 233 Mass. 502, 124 N.E. 322 (1919).

40 U.S.—Chicago, B. & Q. Ry. Co. v. People of State of Illinois, 200 U.S. 561, 26 S. Ct. 341, 50 L. Ed. 596 (1906).

41 U.S.—Hines v. Clarendon Levee Dist., 264 F. 127 (E.D. Ark. 1919).

42 U.S.—Detroit, Ft. W. & B.I. Ry. v. Osborn, 189 U.S. 383, 23 S. Ct. 540, 47 L. Ed. 860 (1903).

43 Ill.—Chicago Junction Ry. Co. v. Illinois Commerce Commission, 412 Ill. 579, 107 N.E.2d 758 (1952).

44 U.S.—Great Northern Ry. Co. v. State of Minn. ex rel. Village of Clara City, 246 U.S. 434, 38 S. Ct. 346, 62 L. Ed. 817 (1918).

45 Wis.—State v. Chicago, M. & St. P. Ry. Co., 182 Wis. 605, 197 N.W. 247 (1924).

46 U.S.—Road Imp. Dist. No. 7 of Crittenden County, Ark. v. St. Louis-San Francisco R. Co., 28 F.2d 825 (C.C.A. 8th Cir. 1928).

47 Kan.—Chamberlain v. Missouri Pac. R. Co., 107 Kan. 341, 191 P. 261, 12 A.L.R. 224 (1920).

48 U.S.—Atchison, T. & S.F. Ry. Co. v. Railroad Commission of State of California, 283 U.S. 380, 51 S. Ct. 553, 75 L. Ed. 1128 (1931).

49 U.S.—Burlington Northern R. Co. v. Department of Public Service Regulation, 763 F.2d 1106 (9th Cir. 1985).

50 La.—Vicksburg, S. & P. Ry. Co. v. Railroad Commission of Louisiana, 132 La. 193, 61 So. 199 (1913).

51 Mo.—State ex rel. Rolston v. Chicago, B. & Q.R. Co., 246 Mo. 512, 152 S.W. 28 (1912).

52 Iowa—CMC Real Estate Corp. v. Iowa Dept. of Transp., Rail and Water Div., 475 N.W.2d 166 (Iowa 1991).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1505

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1505. Telecommunications and media companies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

The courts have adjudicated equal protection challenges to various regulations affecting telecommunications and media companies.

A wireless telecommunications provider states a claim against a village for violation of its equal protection rights by alleging that the village's differential treatment of providers based on whether they are willing to construct a tower or support structure on village-owned property was irrational and unrelated to any legitimate state objective.[1] Also, a telephone company which sues municipalities, alleging deprivation of its rights to use public rights-of-way for a telecommunications network, avers that the municipalities did not tailor their distinctions concerning ground-mounted utility installations to legitimate justifications, as required to state an equal protection claim, where the complaint avers that the ordinance at issue blocked some but not all utility cabinets that exceeded a certain size, without regard to the proposed use or placement of the cabinets.[2]

On the other hand, telephone companies are not deprived of equal protection of the laws by being enjoined from constructing lines which would parallel established lines of another company,[3] or by being required to secure a certificate of public

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

convenience before entering territory in which another company furnishes adequate service,[4] or by being required to bear the cost of moving and relocating telephone facilities.[5]

Also, a state statute which requires commercial mobile radio service providers to collect and remit statutory fees from customers for emergency 911 services does not violate the Equal Protection Clause by treating postpaid and prepaid providers differently where prepaid providersare not similarly situated to postpaid providers since they do not collect fees from their customers through monthly billing statements, and requiring both postpaid and prepaid providers to collect 911 service fees from customers ensures uniform application of the statute.[6]

A provision of the Telecommunications Act which prevents Bell operating companies (BOCs) from immediately providing in-region long-distance telephone service, absent satisfaction of certain statutory criteria, does not violate equal protection principles as the unique nature of BOCs' control over their local exchange areas is a rational basis for the provision.[7]

A newspaper/broadcast cross-ownership rule issued by the Federal Communications Commission (FCC) has been held not to violate equal protection under the Fifth Amendment by treating newspapers differently from other media; similarly, it is not unconstitutional for the FCC to decline to regulate ownership of nonbroadcast media.[8]

A utilities commission's order requiring certain long-distance carriers to pay compensation for intrastate intraLATA transmission of some long-distance calls during transition period prior to authorization of intraLATA competition does not violate the rights of long-distance carriers to equal protection of the law.[9]

Rules adopted by a state public utility commission regarding penalties for attachments to utility poles by nonowners in the absence of a contractual relationship between the pole user and pole owner do not violate equal protection by exempting governmental entities where it is plausible to assume that the legislature sought to address problems caused by private entities, as distinguished from governmental entities, who were presumed to act in public interest.[10]

It is not a denial of equal protection for a city to authorize and make it possible for its own cable television system, which has been operating in some sections of the city, to duplicate and compete with a privately owned system which is operating in a different section of the city.[11]

A cable television ordinance which bans price discrimination and predatory pricing by rates so low for any class of subscriber or geographic location as to diminish competition is not subject to strict scrutiny under the Equal Protection Clause even though it does not apply to other elements of the media.[12]

A decision of the Federal Communications Commission to retain some limits on common ownership of different-type media outlets does not violate the Equal Protection Clause despite imposing on newspaper owners special restrictions that do not apply to other media outlets.[13]

CUMULATIVE SUPPLEMENT

Cases:

Statute creating a single, monthly statewide charge for emergency services phone calls, on each wireline and mobile telephone connection in the state capable of accessing emergency services number, amended rather than repealed section of Emergency Telephone Service Act (ETSA) imposing duty upon telephone service providers to collect emergency services charges from service subscribers and then to remit those charges to emergency-communications districts on monthly basis, and therefore

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

repealed statute rule did not preclude emergency-communications districts from bringing action against providers to recover emergency service call charges under pre-amendment provisions; change was titled an amendment, and new version simply changed manner in which emergency services calls were billed, collected, and remitted. Code 1975, § 11–98–5. Century Tel of Alabama, LLC v. Dothan/Houston County Communications Dist., 197 So. 3d 456 (Ala. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—USCOC of Greater Missouri, L.L.C. v. Village of Marlborough, Mo., 618 F. Supp. 2d 1055 (E.D. Mo. 2009).

2 U.S.—Illinois Bell Telephone Co. v. Village of Itasca, Illinois, 503 F. Supp. 2d 928 (N.D. Ill. 2007).

3 Va.—Clifton Forge-Waynesboro Tel. Co. v. Com. ex rel. Chesapeake & Potomac Tel. Co. of Va., 165 Va. 38, 181 S.E. 439 (1935).

4 Ohio—Celina & Mercer County Tel. Co. v. Union-Center Mut. Tel. Ass'n, 102 Ohio St. 487, 133 N.E. 540, 21 A.L.R. 1145 (1921).

5 Fla.—Southern Bell Tel. & Tel. Co. v. State ex rel. Ervin, 75 So. 2d 796 (Fla. 1954).

6 U.S.—Commonwealth of Ky. Commercial Mobile Radio Service Emergency Telecommunications Bd. v. TracFone Wireless, Inc., 735 F. Supp. 2d 713 (W.D. Ky. 2010), aff'd, 712 F.3d 905 (6th Cir. 2013).

7 U.S.—BellSouth Corp. v. F.C.C., 162 F.3d 678 (D.C. Cir. 1998).

8 U.S.—Prometheus Radio Project v. F.C.C., 652 F.3d 431 (3d Cir. 2011).

9 N.C.—State ex rel. Utilities Com'n v. Southern Bell Tel. & Tel. Co., 88 N.C. App. 153, 363 S.E.2d 73 (1987).

10 Or.—Qwest Corp. v. Public Utility Commission, 205 Or. App. 370, 135 P.3d 321 (2006).

11 U.S.—Consolidated Television Cable Service, Inc. v. City of Frankfort, 465 F.2d 1190 (6th Cir. 1972).

12 Ala.—Storer Cable Communications v. City of Montgomery, Ala., 806 F. Supp. 1518 (M.D. Ala. 1992).

13 U.S.—Prometheus Radio Project v. F.C.C., 373 F.3d 372 (3d Cir. 2004).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

16C C.J.S. Constitutional Law § 1506

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

J. Public Service Companies

3. Control and Regulation of Particular Entities

§ 1506. Water companies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

A number of enactments pertaining to water companies have been upheld against challenges on equal protection grounds.

Water companies may, without denial of equal protection of the laws, be authorized by statute to merge.[1]

A state statute requiring privately owned but not publicly owned water utilities to reimburse customers for certain costs of repair of customers' individually owned water service lines is rationally related to the legitimate governmental purposes of assuring proper maintenance of customers' service lines.[2]

A statute may exempt a public water system serving less than a specified number of users from a fluoridation requirement without denying equal protection of the law.[3]

 © 2021 Thomson Reuters. No claim to original U.S. Government Works.

CUMULATIVE SUPPLEMENT

Cases:

Water/Sewer Act clause requiring city to cede ownership and control of its public water system to another political subdivision did not exceed the State's authority to take property or take property without paying just compensation; transferring property and authority by act of the legislature from a city to another political subdivision where the property was still devoted to its original purpose did not invade the vested rights of the city. West's N.C.G.S.A. Const. Art. 1, §§ 19, 35; Laws 2013, c. 50, § 1(a–f). City of Asheville v. State, 777 S.E.2d 92 (N.C. Ct. App. 2015).

[END OF SUPPLEMENT]

Westlaw. © 2021 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 Pa.—Reeves v. Philadelphia Suburban Water Co., 287 Pa. 376, 135 A. 362 (1926).

2 U.S.—Mountain Water Co. v. Montana Dept. of Public Service Regulation, 919 F.2d 593 (9th Cir. 1990).

3 U.S.—Alkire v. Cashman, 350 F. Supp. 360, 35 Ohio Misc. 55, 64 Ohio Op. 2d 220 (S.D. Ohio 1972), aff'd, 477 F.2d 598 (6th Cir. 1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.